

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 6

9 Transcript of Jury Trial before The Honorable
10 James O. Browning, United States District Judge, Las
11 Cruces, Dona Ana County, New Mexico, commencing on
12 February 5, 2018.

13 For the Plaintiff: Ms. Maria Armijo, Mr. Randy
14 Castellano, Mr Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks,
16 Mr. Richard Jewkes, Ms. Theresa Duncan, Mr. Marc
17 Lowry, Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan
18 Villa, Ms. Justine Fox-Young.

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1 THE COURT: All right. Good morning,
2 everyone. I appreciate everybody being here and on
3 time. The jury is here and ready to go.

4 Mr. Villa.

5 MR. VILLA: When I arrived this morning, I
6 was informed by the United States marshals that Mr.
7 Perez is pretty ill. I went downstairs to speak to
8 Mr. Perez. He informs me that he got ill on
9 Saturday, some kind of flu. He hasn't eaten since
10 Saturday. He feels like he has a fever, head cold,
11 as well as diarrhea. He's not able to control that.
12 As the Court has heard over the course of this case,
13 he's had a number of major surgeries in the
14 abdominal area and doesn't have the abdominal
15 muscles that you or I might, and so he's having a
16 lot of accidents.

17 And I guess that I've got a couple of
18 fears. One is that he's not able to give his full
19 attention to the Court today; two, that the rest of
20 us at the table get what he has, along with perhaps
21 our co-counsel and we make this worse than it is.
22 And three, that he asked to see medical on Saturday.
23 They gave him some Tylenol. He hasn't seen a
24 doctor.

25 Given his frail state of health, I think

1 that him having the flu is much more serious than
2 you or I having the flu. We might be able to make
3 it through it. But Mr. Perez is having a very
4 difficult time. I think the only thing that I can
5 ask the Court to do is to give us a day, let him go
6 get seen by a doctor, and hope that his situation
7 improves and we can resume tomorrow.

8 THE COURT: What's the Government's
9 thoughts on this?

10 MR. BECK: Your Honor, the Government is
11 willing, ready, and able to proceed. But I'm not
12 sure that that's the most compelling concern. I
13 think the most compelling concern is: The defendant
14 has the right to be here for the trial, and to be
15 present, both mentally and physically, for the
16 trial.

17 So with those concerns in mind, I've
18 spoken with Mr. Villa and Ms. Fox-Young, and it does
19 sound serious. If we can -- if the marshals can
20 coordinate to get him to a doctor today and make
21 sure he's back ready tomorrow, I think that may be
22 the best way to proceed. So the Government, as I
23 said, is ready and wants to proceed today, but the
24 United States doesn't want this to be an issue later
25 down the road.

1 MS. ARMIJO: Your Honor, if I may just say
2 for scheduling purposes, I know that we are on
3 schedule, if not ahead of schedule. I know that
4 I've had to move several witnesses up. For example,
5 the medical examiner was going to be testifying
6 today, but I didn't have her scheduled till
7 Thursday. So we have been juggling around witnesses
8 because we are kind of full speed ahead, now that
9 we're in trial and we're going and everything else.
10 So it's not as if we are behind schedule and this
11 will cause a great deal of delay. And we are
12 concerned for Mr. Perez' situation.

13 But I just wanted to let the Court know as
14 far as where we are in trial.

15 THE COURT: Any of the other defendants
16 have any thoughts on the issue?

17 MS. BHALLA: I just don't want to get what
18 Mr. Perez has. No offense to Mr. Perez, but I am a
19 little worried if the lawyers start dropping like
20 flies, we're going to have a problem, Your Honor.

21 MR. LOWRY: On behalf of Team Baca, Your
22 Honor, I would second that concern. I think I've
23 gone through that, but my teammates haven't, and I
24 think if we can avoid the catastrophe that could be
25 pending, we should. I agree with Ms. Armijo. In

1 our perspective, we are ahead of schedule, and I
2 think we're going to end much quicker than anybody
3 anticipated.

4 MS. JACKS: We have no objection on behalf
5 of Mr. Sanchez. And the only thing I would note is
6 that Mr. Perez is white as a sheet.

7 THE COURT: Well, here's my concern,
8 though. I don't know what one day is going to give
9 us. If he's got the flu, he's got the flu. I'm not
10 sure what that gives us. I wish he'd been able to
11 see a doctor on Saturday, but I'm not sure what
12 anybody can do. We've got some jurors that have
13 kind of gutted it out. He's not going to be
14 testifying or anything today. I'd rather just see
15 if we could see how it goes. If we need to -- if
16 it's not going to work, you know, we're going to be
17 taking too many breaks or things like that, or it's
18 just not going to work, then we may have to rethink
19 it as the day goes on.

20 But I'm a little concerned about -- I'm
21 just not sure what a day does for us. If they tell
22 him he's got the flu, what do we do tomorrow and
23 things like that. I think we're just going to have
24 to gut through this a little bit.

25 MR. VILLA: Your Honor, I'm no doctor.

1 I'm married to a nurse and know a little bit about
2 this stuff. I know if they give him Tamiflu in a
3 certain period of time, it can have a significant
4 improvement on his health. I don't know what the
5 time period is. He did request to see medical on
6 Saturday because he was concerned about Monday. I
7 know there is a window of time you've got to get
8 Tamiflu. And if that window is today, he may be
9 healthy enough to proceed tomorrow as opposed to
10 getting worse or getting us into a real crisis
11 situation.

12 THE COURT: Is there anybody from the
13 Marshal Service that can comment as to why he wasn't
14 given medical help on Saturday? What could be done
15 today to maybe get somebody over here to help him
16 out?

17 THE MARSHAL: Your Honor, Joe Castro at
18 the Marshal Service. I understand that Mr. Perez
19 saw a provider this morning. I don't know the
20 provider's hours on weekends, if they're on call.
21 But he did see someone this morning, and we would
22 make sure he gets seen immediately at the time he
23 returns back to the facility.

24 THE COURT: How long was he seen by a
25 provider this morning?

1 MR. PEREZ: Just a nurse.

2 THE MARSHAL: How long were you with them?

3 MR. PEREZ: (Snaps fingers.)

4 THE MARSHAL: Not long, Your Honor.

5 MR. VILLA: Mr. Perez is saying he saw a
6 nurse. He didn't see a doctor.

7 THE COURT: But sometimes that's --

8 THE MARSHAL: I don't know if it's a
9 nurse, nurse practitioner. Just some sort of
10 provider, Your Honor.

11 THE COURT: Do you have somebody that
12 could swing by and see him here at the courthouse
13 today?

14 THE MARSHAL: That's what the U.S.
15 Attorney's Office is requesting, and I've never seen
16 that happen.

17 THE COURT: Would you try to make it?
18 There's a lot of things unusual about this trial.

19 THE MARSHAL: I could request it, yes,
20 Your Honor.

21 THE COURT: If somebody could swing by,
22 I'd very much appreciate it.

23 MS. ARMIJO: Your Honor, what I was
24 requesting is even maybe this morning -- and I don't
25 know, and I don't want to put the U.S. marshals out.

1 Maybe we could check to see if they are able to -- I
2 know this is unusual, but I was going to see if
3 maybe he could -- I know Memorial Medical Center
4 sees inmates. If he could go to Memorial Medical
5 Center, I think all of us who have had been sick,
6 there's medications to stop bowel situations.
7 There's medicines for nausea. Things even to make
8 him more comfortable. And of course, they can test
9 him for the flu, and then we know what we're dealing
10 with. If we have somebody here that has type A or
11 type B flu, that's an issue, too, and getting the
12 Tamiflu.

13 But there certainly are medications that
14 he can take that would make him more comfortable and
15 ease the situation. So I don't know if we could
16 maybe take a break so the marshals can explore that
17 and to see if that's something they can do. But I
18 don't know.

19 THE MARSHAL: I can certainly take him to
20 the hospital, Your Honor.

21 MR. VILLA: And Your Honor, I spend more
22 time than you'd like to know fighting with various
23 jail facilities trying to get my clients medical
24 attention. Taking him back to the Dona Ana
25 Detention Center to get medical help is not a good

1 idea. I would second the notion that he needs to go
2 to an urgent care or something like that. If he's
3 going to see a doctor, that's probably the fastest
4 way to get him to the doctor.

5 THE COURT: Why don't you do this: Why
6 don't you see if you can get somebody here. Maybe
7 we'll take an early lunch break, and if we don't
8 have somebody here by then, you can take him over to
9 the hospital or take him somewhere.

10 THE MARSHAL: Yes, Your Honor.

11 THE COURT: But let's see if you can get
12 somebody over here to look at him, and see if they
13 can start prescribing some medicines or things like
14 that, and we'll maybe take an early lunch break
15 today. And if we don't have somebody over here by
16 this point, then we can -- you can run him to the
17 hospital, and we'll just wait for him.

18 THE MARSHAL: Very well.

19 MR. CASTELLANO: Your Honor, the concern I
20 have -- I'm all in favor of moving this trial, but
21 the concern I have is if Mr. Perez has kind of
22 gastrointestinal distress and feels the need to move
23 quickly, he won't be able to move quickly, and he is
24 shackled. So I'm concerned that he may need to make
25 a run for the bathroom. He may trip. He's going to

1 be shackled.

2 THE COURT: He can't run to the bathroom.
3 But Mr. Villa, Ms. Fox-Young, signal, and we'll
4 just -- I'll just dismiss the jury at that time. I
5 won't hesitate to do it. Okay?

6 MS. FOX-YOUNG: Your Honor, just briefly.
7 You know, Counsel is in a difficult position because
8 we've all got to stay healthy through this trial,
9 too. I've got a four-month-old baby at home and an
10 immunocompromised husband, and I want to be able to
11 sit and talk to my client through trial. So we've
12 got a situation where we've got to get Rudy healthy
13 and we've got to stay healthy. So we can't sit with
14 him this morning. So I just hope the Court
15 understands. I mean, he's coughing. If he does
16 have flu and hasn't had Tamiflu, we could all be in
17 really bad shape really soon.

18 THE COURT: Well, we've just got a
19 problem. We've got men over here and at the defense
20 table that are coming out of detention facilities.
21 It's just a hard place as far as contagious
22 diseases. We all that work in the court system know
23 that.

24 MR. BECK: The only other thing I'll add,
25 Your Honor, is: It also just concerns me of the

1 spectacle if Mr. Perez has to raise his hand or --

2 THE COURT: No, he just tells Mr. Villa or
3 Ms. Fox-Young, and they'll signal to me we need to
4 take a break. It will be done automatically.

5 MR. BECK: Do we have enough time for
6 that, Mr. Villa? Ms. Fox-Young? Do you think we
7 have enough time for him to indicate to you?

8 THE COURT: Mr. Beck, that's just the way
9 it's going to work. Okay? All right.

10 All rise.

11 MS. FOX-YOUNG: Your Honor, we just need
12 to get Mr. Perez dressed for court, if the jury is
13 going to come in. I'm not sure where his
14 clothing -- can we just get him a jacket?

15 MR. VILLA: Just bring the jacket.

16 THE COURT: I looked at Mr. Perez'
17 arguments this morning on the impeachment. I'm
18 still not convinced that his credibility has been
19 attacked under 806. I'm also not convinced that 806
20 comes into play until his credibility is attacked.

21 Is Mr. Palomares going to come back, Mr.
22 Beck, in any way? I forgot to put Mr. Palomares on.

23 MR. BECK: I don't think we intend to
24 recall him.

25 THE COURT: It might be that during the

1 course of the trial, we might want to bring Mr.
2 Palomares up and put him on the stand or have him
3 testify here as to what he knows. It might be just
4 a good record here. If he's not going to testify
5 that anybody told him there was a threat on Mr.
6 Perez, or otherwise, it might just make for a clean
7 record here. I'll leave it to you as to what it is,
8 but it might help the record if he were to come up
9 one day out of the presence of the jury and we see
10 if he has anything to say.

11 MR. BECK: We can do that. My
12 recollection of the record is, when he was asked if
13 he knew anything about a threat, he said, "I don't
14 know that."

15 THE COURT: That's mine, too. But we
16 might want to just plumb it a little better --

17 MR. BECK: Understood, Your Honor.

18 THE COURT: -- to do that. But I still
19 think 806 is not available to a party opponent until
20 his credibility is attacked. And right at the
21 moment you have everybody wanting his statements to
22 be credible.

23 MR. VILLA: Well, Your Honor, it's the
24 defense that's intending to impeach Mr. Perez'
25 statements.

1 THE COURT: I know.

2 MR. VILLA: We're entitled to impeach.

3 THE COURT: I don't think so. Nothing in
4 806 says that, you know, you can start supporting
5 his credibility on another statement that hasn't
6 been introduced into court. Right now nobody is
7 attacking his credibility. You're trying to get a
8 statement in.

9 Pull the door shut. Does he have his
10 jacket? Is that what he's going to wear today?

11 MS. FOX-YOUNG: We're looking for a
12 jacket, and a mask. I think the marshals went to
13 gather both of those things.

14 THE COURT: Do you want to just explain in
15 your own words to the jury that he's sick today, or
16 what do you want to do? Do you want me to do it?

17 MR. VILLA: I think probably the Court.

18 THE COURT: Okay.

19 MR. VILLA: And Your Honor, I would just
20 say, while we've got a couple of minutes here, I
21 don't think that it's required that anyone else be
22 attacking the credibility of the statement that Mr.
23 Perez made to Agent Palomares in order for us to be
24 able to introduce statements that contradict the
25 statements made to Mr. Palomares, because as I

1 talked about in the brief and, you know, the senate
2 report and those sorts of things, there are other
3 reasons to bring in an impeachment statement to try
4 to help explain or help the jury understand the
5 statement that was introduced through Agent
6 Palomares.

7 THE COURT: I disagree. Take a look at
8 806. It's not going to come into play until his
9 credibility is attacked. Those are the cases that
10 you cited from the First and the Seventh Circuit.
11 And I read the advisory rule there. But until it's
12 attacked in some way, I'm not sure you're entitled
13 to come in and bring in I guess what would be a
14 prior inconsistent statement. Take a look at it.

15 MR. VILLA: I'll look at it again, Your
16 Honor.

17 THE COURT: I think you pushed it pretty
18 hard, and you probably exhausted it, but I still
19 think that it's going to require somebody to attack
20 his credibility. And right now, nobody is doing
21 that.

22 Does anybody else have anything while
23 we're waiting for the jacket to come up?

24 Anything from the Government to discuss?

25 MR. BECK: No, Your Honor.

1 THE COURT: Ms. Jacks, anything?

2 MS. JACKS: No.

3 THE COURT: Mr. Lowry, anything about --

4 MS. ARMIJO: I bet you're happy with the
5 football results.

6 MR. VILLA: Looks like he's got his
7 jacket. So we can bring the jury in. He's going to
8 wear a medical mask. So I think if the Court would
9 just explain that to the jury, we'd appreciate it.

10 THE COURT: I will. All rise.

11 (The jury entered the courtroom.)

12 THE COURT: Everybody be seated. I
13 appreciate you coming back and ready to go on time.
14 We needed to discuss a few matters this morning
15 after all of us being gone. I appreciate your
16 patience.

17 I had a nice trip to Hobbs. And got there
18 a little bit after the start of the game. You don't
19 want to take me to Las Vegas, do you? I would have
20 gotten it all wrong. I was happy with the game. I
21 was glad to see Philadelphia win. Brady's going to
22 throw for 505 yards and score 33 points and lose. I
23 wouldn't have thought it would have happened. So it
24 was a fun game. I got to spend a little time with
25 my dad on -- his birthday is on Wednesday, but

1 that's the best we can do.

2 I had a good weekend and I hope you had a
3 good weekend and I appreciate you being back.

4 As can you tell, Mr. Perez is going to
5 wear a mask. He's not feeling well this morning, so
6 we might take some breaks to help him get through
7 the day, and maybe have some longer gaps here; see
8 if he may need medical attention or something like
9 that. We'll just try to gut through it here a
10 little bit this morning, see how it goes. But he's
11 going to wear a mask to not get anybody else sick.
12 And we know it's a tough time of year for people
13 like that. And I appreciate Mr. Perez hanging in
14 there with us, and we'll see how it goes.

15 All right. Is Mr. Calbert still our
16 witness?

17 MR. BECK: Yes, he is. I think he's being
18 brought up. I think they were just waiting for the
19 jury to clear. So it may take a moment.

20 THE COURT: All right.

21 All right, Mr. Calbert, if you'll return
22 to the witness box. And I'll remind you,
23 Mr. Calbert, that you're still under oath.

24 All right. Ms. Fox-Young, if you wish to
25 continue your cross-examination of Mr. Calbert, you

1 may do so at this time.

2 MS. FOX-YOUNG: Thank you, Your Honor.

3 THE COURT: Thank you, Ms. Fox-Young.

4 DAVID CALBERT,

5 after having been previously duly sworn under
6 oath, was questioned, and continued testifying
7 as follows:

8 CONTINUED CROSS-EXAMINATION

9 BY MS. FOX-YOUNG:

10 Q. Good morning, Mr. Calbert.

11 A. Good morning.

12 Q. Do you recall Friday afternoon you and I
13 were talking about a statement that you said Mr.
14 Perez made to you at Torrance County?

15 A. Yes.

16 Q. Okay. And was that in 2017?

17 A. Yes.

18 Q. Okay. And you know that Javier Molina
19 died in early 2014?

20 A. Yes.

21 Q. And so this statement that you say
22 Mr. Perez made to you -- that was at least three
23 years after Mr. Molina died, is it not?

24 A. Yes.

25 Q. And when Mr. Perez talked to you, he told

1 you he just wanted credit; right? He wanted credit
2 for the piece?

3 A. Yes, for putting something in. Helping
4 out. For helping out.

5 Q. And he didn't give you any details about
6 how the walker piece was taken, did he?

7 A. No.

8 Q. And he didn't tell you that Mario
9 Rodriguez came to take it from him, did he?

10 A. No, he didn't mention that.

11 Q. And he didn't tell you, either, that he
12 was scared of Mario Rodriguez, did he?

13 A. No.

14 Q. Or that he would be next if he stopped
15 Mario?

16 A. He didn't do that.

17 Q. Because that would be weak? He didn't
18 tell you that?

19 A. No.

20 Q. And all this happened after Rudy was
21 charged; right?

22 A. Yes.

23 Q. Can you tell me when you were charged? I
24 know not in this case, but you were charged in
25 another case. Do you remember when that was?

1 A. Right; I was arrested at the first of all
2 this. I don't know exactly what the date, you know
3 what I mean, but...

4 Q. Late 2015?

5 A. Might have been.

6 Q. Okay. And at some point after you were
7 arrested and charged, did you get a computer to use
8 that had the information from the case on it?

9 A. Yes.

10 Q. And that's what's called a tablet?

11 A. Yes.

12 Q. And do you still have that tablet?

13 A. I just got it back, yes.

14 Q. So you've had it since close to the time
15 that you were charged?

16 A. On and off.

17 Q. Okay. And why was it taken away?

18 A. Well, I guess something happened in
19 Sandoval when they came and got everybody's, because
20 somebody was tampering with them and whatnot.

21 Q. Do you know if that was somebody working
22 for the Government who was tampering with them?

23 A. I can't say. I don't know.

24 Q. So on that computer, that tablet, you were
25 able to see the statements that other gang members

1 working for the Government were making; right?

2 A. There was a lot -- I looked at a lot of
3 them, but there was a lot more.

4 Q. Right. And so you knew that Mr. Perez had
5 been in solitary confinement next to Billy Cordova?

6 MR. BECK: Objection, Your Honor. I think
7 based on his last statement, I think this would all
8 be hearsay.

9 THE COURT: It sounds like it would be,
10 Ms. Fox-Young.

11 BY MS. FOX-YOUNG:

12 Q. Did you know -- you said that you knew
13 statements that some of the folks working for the
14 Government were making. Did you know about
15 statements that Mr. Billy Cordova was making?

16 A. Yes.

17 Q. And did you know -- do you know what year
18 those pertained to?

19 A. I'm not sure.

20 Q. Do you know if they pertained to Mr.
21 Perez?

22 A. I'm thinking some of them.

23 MR. BECK: Objection, Your Honor. That
24 would be hearsay.

25 THE COURT: Sustained.

1 MS. FOX-YOUNG: I won't elicit any further
2 if he doesn't know, Your Honor.

3 BY MS. FOX-YOUNG:

4 Q. And so you told the Government about some
5 things that you say Mr. Perez told you. You told
6 the Government in 2017, too; right?

7 A. Yes.

8 Q. After you'd had this computer for a couple
9 years?

10 A. Yes.

11 Q. And that was also after you'd sat down
12 with Lupe Urquizo and gotten your stories straight;
13 right?

14 A. No, we didn't -- we talked about it, a
15 little bit, about it. But that meeting was -- he
16 was trying to pretty much recruit me to go do what
17 he was doing.

18 Q. Mr. Calbert, in terms of the timing, you
19 sat down with Mr. Lupe Urquizo before he talked to
20 the Government; right?

21 A. Yes.

22 Q. And you talked to him about this case?

23 A. Not this part of it, but yes.

24 Q. Okay. And you knew, didn't you, that Mr.
25 Perez wasn't pleading guilty; that he was fighting

1 the case; right?

2 A. Yes.

3 Q. And you knew that unlike the killers
4 Armenta, Montoya, Rodriguez, and Martinez, he was
5 going to fight the case at trial?

6 A. Yes.

7 Q. And you knew that the Government would
8 like to hear you implicating Mr. Perez; right? That
9 would give you a better deal?

10 A. No, I figured, you know what I mean,
11 but...

12 Q. Yeah, serve him up and you'd get a better
13 deal from the Government?

14 A. There's a lot more other things that they
15 would probably rather like than that, you know what
16 I mean?

17 Q. But you knew they'd like that. Do you
18 remember on Friday you and I were talking about some
19 phone calls that you made from the jail?

20 A. Yes.

21 Q. And I asked you about some of them. I
22 asked you if you remembered talking to your family
23 members about getting home in three years. Do you
24 remember me asking you that?

25 A. Yeah, I remember that, yes.

1 Q. Do you remember telling your family you'd
2 be home in maybe three years?

3 A. Maybe my mom, you know, just trying to
4 comfort her. She's having a real hard time with all
5 this. So I tried a more comforting thing, rounding
6 things off. It's not up to me. It's up to the
7 Government.

8 Q. The folks at this table get to make a
9 decision and tell the Court how long you should
10 serve; right?

11 A. Yes, ma'am.

12 Q. Do you remember talking to anybody beside
13 your mom about getting a sweet deal?

14 A. I don't know about a sweet deal. Maybe a
15 deal.

16 Q. Okay.

17 MS. FOX-YOUNG: Your Honor, I'd like to
18 play -- and I don't think the Government objects,
19 and we've provided this to the Government. This is
20 going to be our Exhibit Z1. I won't move it yet.

21 MR. BECK: Your Honor, I did not object
22 based on his testimony last week. However, I think
23 that now there wouldn't be a reason -- doesn't sound
24 like he needs refreshing of his recollection. And
25 he just explained he remembers that and why he said

1 it. It's not impeachment. At this point it's just
2 hearsay.

3 THE COURT: Why don't y'all approach so I
4 know what's on the tape?

5 (The following proceedings were held at
6 the bench.)

7 THE COURT: What is on this Z1?

8 MS. FOX-YOUNG: It's about a
9 one-and-a-half-minute recording of him talking to --
10 I believe it's his brother, not his mother, so...

11 THE COURT: Oh, this is Calbert.

12 MS. FOX-YOUNG: It's him. And I think
13 you'll be able to identify his voice. This is not
14 for impeachment. It's very quick, and just what
15 he's getting and what he's been offered. And I know
16 the Government hasn't had a chance to listen to it.
17 It's very short and the Government provided these
18 calls, thousands of them.

19 THE COURT: What is the problem with it,
20 then?

21 MR. BECK: I think it's hearsay. You can
22 impeach with bias and motive, but you can't with
23 hearsay unless we're going to give a limiting
24 instruction that this isn't considered for the
25 truth; it's just bias and motive, and it would be

1 irrelevant. I think she can ask him the
2 information. If he doesn't remember, she can
3 refresh his recollection, but that takes place
4 outside of the jury.

5 THE COURT: Well, why don't you set it up?
6 Why don't you set it up and see if he made these
7 statements? If he made the statement, then I'll let
8 you impeach him with the statements and I'll give a
9 limiting instruction that this is to impeachment of
10 Mr. Calbert and they can't consider it to the truth
11 of the matter. Is that acceptable?

12 MS. FOX-YOUNG: That's fine.

13 THE COURT: Why don't you set it up and
14 see if he needs to refresh his memory? If he
15 doesn't, we'll go on.

16 MS. FOX-YOUNG: If he doesn't, you'll
17 allow me to play at this time?

18 THE COURT: I'll allow you to play it.

19 (The following proceedings were held in
20 open court.)

21 THE COURT: Ms. Fox-Young.

22 MS. FOX-YOUNG: Thank you, Your Honor.

23 BY MS. FOX-YOUNG:

24 Q. Mr. Calbert, you told me you recalled
25 telling your mother you thought you were only going

1 to get three years; is that right?

2 A. Yes.

3 Q. But you don't remember telling anybody
4 else?

5 A. No.

6 MS. FOX-YOUNG: Your Honor.

7 THE COURT: Yeah, you can go ahead and
8 play it.

9 MR. BECK: And Your Honor, will you
10 provide the instruction to the jury?

11 THE COURT: This is just used to -- Ms.
12 Fox-Young, this functions -- this can only be used
13 to impeach Mr. Calbert. It's not to consider it for
14 the truth of the matter of the statements that are
15 going to be made, but you can consider it in
16 determining whether Mr. Calbert is truthful or
17 credible or not.

18 (Audio clip played.)

19 BY MS. FOX-YOUNG:

20 Q. And Mr. Calbert, this is what you hear on
21 your end when you make a call from the jail, is it
22 not?

23 A. Yes.

24 Q. And this is just the recording that
25 precedes every jail call that you make?

1 A. Yes. Yes.

2 Q. Okay. Go ahead.

3 (Audio clip played.)

4 Q. Is that your voice, Mr. Calbert?

5 A. Yes.

6 Q. Okay. Go on.

7 (Audio clip played.)

8 Q. Do you know who you were talking to on
9 that phone call?

10 A. Yes. That was my little brother.

11 Q. Okay. You have a couple of brothers?

12 A. Yes.

13 Q. And I think one of the first things you
14 said to him was you'd be out in a couple years,
15 three years at the worst; is that right?

16 A. Yeah. Just, like I said, comforting my
17 family.

18 Q. But that's what you told them?

19 A. Yes, yes.

20 Q. And you also told him, did you not, that
21 they were going to come after you with another
22 murder charge; right?

23 A. Yes.

24 Q. And is the "they" the people at this
25 table?

1 A. Yes.

2 Q. And is that the murder charge for the
3 death of Javier Molina?

4 A. Yes.

5 Q. And you said they were going to "bury me,"
6 that you were through; right?

7 A. Yes.

8 Q. How did you know that?

9 A. Because I was facing 30 right now, and I
10 knew, so if they did come on another charge, I would
11 have been done.

12 Q. And they told you they were going to come
13 with another charge if you didn't tell stories for
14 them; right?

15 A. No.

16 Q. No, they didn't say that? And you said,
17 "This is really the only way out, bro. I got to
18 look out for myself"; right?

19 A. Yes.

20 Q. And when you said "This is really the only
21 way out," you're talking about working for the
22 Government?

23 A. Yes.

24 Q. So that's really what you're getting in
25 exchange for working for the Government, isn't it?

1 A. I would expect, yes.

2 Q. You're getting to walk on a murder charge?

3 A. Like I said, I was never charged with that
4 in the first place.

5 Q. You were never charged at all. And you're
6 expecting a couple years, three years at the worse;
7 right?

8 A. At the best, you know what I mean?

9 Q. At the best. And on Friday we talked
10 about stabbing Mr. Silva, which carries 30 years;
11 right?

12 A. Yes.

13 Q. But even though you've admitted to that
14 and even though you've admitted to being involved in
15 the murder of Javier Molina, three years at the
16 worse; right?

17 A. Like I said, it's not up to me. It's up
18 to them people at the table and the Judge, so --

19 Q. And in fact, if you had been charged with
20 the murder of Javier Molina, you would have been
21 facing life; right?

22 A. I'm already facing life.

23 Q. And if you were convicted, you would have
24 spent the rest of your life in prison?

25 A. I'm already facing 30 years.

1 Q. Three years at the best, right -- or three
2 years at the worst?

3 A. My mom, I was comforting her, yeah.

4 MS. FOX-YOUNG: Thank you, Your Honor. No
5 further questions.

6 THE COURT: Thank you, Ms. Fox-Young.

7 Ms. Bhalla, Mr. Maynard, do you have any
8 questions of Mr. Calbert?

9 MS. BHALLA: No, Your Honor. Thank you.

10 THE COURT: How about you, Ms. Jacks?

11 MS. JACKS: I do, Your Honor. Thank you.

12 THE COURT: Ms. Jacks.

13 CROSS-EXAMINATION

14 BY MS. JACKS:

15 Q. Mr. Calbert, you told us last week that
16 you go by the nickname Spider?

17 A. Yes, ma'am.

18 Q. Is that a name that you gave yourself, or
19 is it a name that was given to you?

20 A. I gave myself.

21 Q. What was the thought behind giving
22 yourself that name Spider?

23 A. It sounded cool.

24 Q. What about it sounded cool?

25 A. It just does. It just does.

1 Q. It does? Is a spider, the nickname
2 Spider, meant to put fear into other people?

3 A. I'm sure it does, some.

4 Q. Is it to suggest that you're a dangerous
5 person?

6 A. Maybe.

7 Q. Is it also to suggest that you may be a
8 person that can sneak up on somebody and surprise
9 them?

10 A. I guess you could look at it like that.

11 Q. Is that how you looked at it when you
12 named yourself Spider?

13 A. No.

14 Q. How did you look at it?

15 A. Like I said, it sounded good.

16 Q. Correct me if I'm wrong, but did you go to
17 prison in 1998?

18 A. Yes.

19 Q. And since 1998, have you ever been out of
20 custody?

21 A. Yes. Yes.

22 Q. Okay. So tell me, when did you get out of
23 custody after you went in in 1998?

24 A. Must have been about maybe 2003, I'm
25 thinking.

1 Q. And then you went back in?

2 A. Yes.

3 Q. And once you went back in, have you been
4 in prison that whole time?

5 A. Since 2004, yes.

6 Q. Now, Ms. Fox-Young was just asking you
7 some questions about the case that you were charged
8 with, and I just want to go over that a little bit.
9 Okay? You were arrested in December of 2015 when
10 all these -- when a bunch of people allegedly from
11 SNM were arrested; right?

12 A. Yes.

13 Q. And you weren't charged in this case, but
14 you were charged in a different case; right?

15 A. Yes.

16 Q. And that case -- was the case number case
17 number 15-4269?

18 A. I can't recall.

19 Q. Were you charged in that case with two
20 crimes?

21 A. Yes.

22 Q. All right. And were the two crimes the
23 conspiracy to murder Paul Silva and assault with a
24 deadly weapon on Paul Silva?

25 A. No.

1 Q. Okay. What were the crimes?

2 A. One I was doing time for at the time were
3 two COs and that Bandit. I don't know his name.
4 Gonzalez? Gonzalez, maybe.

5 Q. Right. And you told us about that last
6 week.

7 A. Yes.

8 Q. But my question is: When you got arrested
9 in December of 2015 and you were charged in a
10 separate case, were the charges in that case related
11 to the assault on Paul Silva?

12 A. What do you mean related? Like --

13 Q. Were you charged with conspiring to kill
14 Paul Silva?

15 A. No, not yet.

16 Q. And were you charged with assault with a
17 deadly weapon on Mr. Silva?

18 A. No, it was just prison. I was just in
19 trouble in prison for it. They hadn't brought
20 charges on me.

21 Q. But in December of 2015, you were arrested
22 on a new case; right?

23 A. It's the same case, yeah. It was for
24 that.

25 Q. It was for the assault on Paul Silva?

1 A. Yes.

2 Q. The one we saw on the video last week?

3 A. Yes.

4 Q. And were there any co-defendants on your
5 case?

6 A. Mauricio Varela.

7 Q. So Mr. Varela was also accused of
8 assaulting Mr. Silva with you?

9 A. Yes.

10 Q. And Mauricio Varela -- is he an SNM Gang
11 member?

12 A. Yes.

13 Q. Does he go by the nickname of Archie?

14 A. Yes.

15 Q. All right. So you were asked some
16 questions about Mr. Silva last Friday, and I want to
17 follow up on a few of those things. Okay? So the
18 assault on Mr. Silva, the one that we saw in the
19 video -- did that take place at the Penitentiary of
20 New Mexico South facility?

21 A. Yes.

22 Q. And that's in Santa Fe; right?

23 A. Yes.

24 Q. It's across the road from PNM North
25 facility?

1 A. Yes.

2 Q. So they're two separate facilities, but in
3 the same property in Santa Fe?

4 A. Yes.

5 Q. And the South is a Level 5 facility?

6 A. Yes.

7 Q. And the North is a Level 6?

8 A. Yes.

9 Q. Okay. So did Mr. Silva come to your pod
10 at PNM South and claim he was running the show?

11 A. Yes.

12 Q. And did he come after you got rid of
13 Arturo Garcia, after he was removed from that pod?

14 A. Yeah. Yes.

15 Q. I want to talk to you a minute about
16 Mr. Garcia, because you didn't like him, did you?

17 A. No, I didn't.

18 Q. And why didn't you like him?

19 A. We were always arguing over something
20 stupid.

21 Q. Wasn't part of the reason you didn't like
22 him because he was taking drugs from people and not
23 paying for it?

24 A. One of the reasons.

25 Q. And it caused some anger among people that

1 were in the pod; right?

2 A. Yes.

3 Q. And was there something that you did or
4 that you did in connection with other people that
5 were living with you to get Mr. Garcia removed from
6 the pod?

7 A. No.

8 Q. Well, did you, quote, kite him out?

9 A. No.

10 Q. Do you know what "kite him out" means?

11 A. I know what that means.

12 Q. Tell me what that means, first of all.

13 A. To go and say somebody is going to get hit
14 or something, send it through the mail to the STG or
15 whatever, and they take action and take them out of
16 there, whatever.

17 Q. So what kiting somebody out means, if you
18 want to get somebody removed from the housing
19 unit --

20 A. Yes.

21 Q. -- you write a letter to the gang
22 correctional officers?

23 A. Yes.

24 Q. And you tell them, "Hey, this guy's life
25 is in danger"?

1 A. Yes.

2 Q. And whether it's in danger or not, the
3 gang unit responds to that; right?

4 A. Right.

5 Q. And they remove the guy from the housing
6 unit?

7 A. They question everybody, see if there is a
8 problem.

9 Q. And then maybe the guy is removed from the
10 housing unit?

11 A. Yes.

12 Q. So it's a way to try to manipulate the
13 prison correctional officers, to get somebody out of
14 your housing unit that you don't like.

15 A. Yeah, for some people.

16 Q. And that's known as kiting somebody out?

17 A. Yes.

18 Q. Now, you're saying you didn't kite
19 Mr. Garcia out of the unit?

20 A. No.

21 Q. Did somebody else in your pod kite
22 Mr. Garcia out of the unit?

23 A. I can't say, because people usually keep
24 it undercover when they're doing things like that.
25 But I'm pretty sure they did it.

1 Q. Were you interviewed by the FBI and the
2 prosecutors in this case on August 22 of 2017?

3 A. Yes.

4 Q. Okay. That was the interview that you had
5 with law enforcement after you were given an
6 opportunity to visit with Lupe Urquizo; right?

7 A. Yes.

8 Q. And did you tell the investigator -- I
9 guess it was Agent Acee -- or, no, Agent Neale and
10 some of the other prosecutors and the other
11 prosecutors that were there -- that Garcia was
12 transferred after another inmate kited him out?

13 A. Like I said, I figured, you know what I
14 mean, like, somebody is not going to come tell me,
15 "Hey, I'm going to kite this guy out and you're
16 going to tag team on it." They're not going to tell
17 everybody, you know.

18 Q. So after Garcia left, Silva came in and
19 claimed he was the new boss; right?

20 A. Yes, on the orders of Arturo Garcia.

21 Q. And how did that make you feel?

22 A. In danger.

23 Q. It made you feel in danger?

24 A. Yes.

25 Q. Did it eventually make you feel angry?

1 A. Yeah. There was a bit of feelings like
2 that also.

3 Q. Did it make you feel angry because Silva
4 came in and was bossing people around, acting like
5 he had some sort of authority to run the show?

6 A. Yes.

7 Q. And you didn't recognize that authority,
8 did you?

9 A. No.

10 Q. And the longer he pushed, the more angry
11 you got?

12 A. Yes.

13 Q. And eventually you took enough of that and
14 you decided, hey, I'm going to get this guy. And
15 you attacked him.

16 A. That, and there's a lot of other elements
17 to that, why. But that's one of the main reasons,
18 yes.

19 Q. Well, eventually, you attacked him at
20 least in part because you were getting mad at him
21 trying to push you around.

22 A. That's the main part, yes.

23 Q. So was your stabbing of Silva something
24 that was sanctioned by the SNM?

25 A. No.

1 Q. All right. Was it something that was
2 ordered by the SNM?

3 A. Not that one, no.

4 Q. And was it something that you did because
5 you were somehow trying to improve your status
6 within the SNM?

7 A. Yes. All for the cause, yes.

8 Q. Well, you're saying that now. But back
9 when you were interviewed, right after -- about a
10 week after the assault on Mr. Silva, you spoke to a
11 guy named Cory Henn from the STIU unit; right?

12 A. After that happened?

13 Q. Yes.

14 A. Yes.

15 Q. And you told Mr. Henn that "I'm doing me,"
16 didn't you?

17 A. Yes, I did.

18 Q. And you told him that the assault on Silva
19 was your thing because you were mad at Silva.

20 A. I was required to.

21 Q. Now that's what you're saying.

22 A. No, then. Because you go and you talk to
23 the STG about anything like that, and that's your
24 life forfeit, you know what I mean? That's just how
25 it is.

1 Q. Did you tell Mr. Henn that you assaulted
2 Silva because you lost your temper?

3 A. Yeah.

4 Q. Now I want to ask you a couple of
5 questions about Mauricio Varela's involvement in the
6 assault on Silva. Okay? Mauricio Varela was a
7 friend of yours; right?

8 A. Yes.

9 Q. And people knew that you guys were -- you
10 hung out together and you were close?

11 A. Right.

12 Q. Right. So when you attacked Silva in the
13 rec yard, was Silva with some other people that were
14 considered his friends or his buddies?

15 A. Yes.

16 Q. And when you stabbed Silva, did one of
17 Silva's friends shove Mauricio Varela?

18 A. Yes.

19 Q. So because you were attacking Silva, one
20 of Silva's friends decided to get into it with
21 Mauricio?

22 A. Yes.

23 Q. And he shoved Mauricio off of a walkway?

24 A. Right.

25 Q. And they were wrestling around on the

1 ground.

2 A. Well, not him and the guy they pushed, no.

3 Q. I'm sorry, I'm not understanding your
4 answer.

5 A. One guy pushed him, and he grabbed the
6 other guy and fell over.

7 Q. And that's how Mauricio Varela got
8 involved in the incident with Paul Silva?

9 A. Yes.

10 Q. That type of thing happens in prison;
11 right?

12 A. Yes.

13 Q. Like if you decide to move on somebody,
14 you can expect that person's friend to move on one
15 of your friends?

16 A. Yes.

17 Q. That's just a common occurrence when there
18 is a physical altercation on the prison yard?

19 A. Yes.

20 Q. All right. I'm going to move to another
21 topic. Okay?

22 I want to go back to your arrest in
23 December of 2015. When you were -- well, did you
24 fight your case from the time of that arrest up
25 until August 22, when you met with Lupe Urquizo and

1 then the FBI at the office in Albuquerque?

2 A. Yes.

3 Q. So you fought your case for almost two
4 years?

5 A. Yes.

6 Q. And ultimately, after you had that August
7 22 meeting in 2017 with Lupe and then the FBI, did
8 you enter a plea of guilty?

9 A. Yes.

10 Q. And was that done on September 28 of 2017?

11 A. It might have been.

12 Q. And I think you told us last week you pled
13 to two charges which gave you the potential of a
14 maximum sentence of 30 years.

15 A. Yes.

16 Q. But you pled with the expectation that you
17 would get a significant reduction in that sentence.

18 A. Yes.

19 Q. In exchange -- as one of the benefits for
20 being a Government witness.

21 A. Yes.

22 Q. Now, during the almost two years that you
23 fought the case, were you provided -- I think Ms.
24 Fox-Young asked you some questions about this. Were
25 you provided some of the materials that are known as

1 discovery?

2 A. Yes.

3 Q. And can you just tell us briefly what
4 kinds of materials those are, like what that
5 consists of?

6 A. Just people making statements, people --
7 discoveries of everybody's past, like...

8 Q. Criminal history?

9 A. Exactly. And just videos, video camera,
10 action of situations and things like that,
11 cellphones, phone calls, you know.

12 Q. So there were recordings, videos?

13 A. Yes.

14 Q. Some recorded statements?

15 A. Yes.

16 Q. Telephone calls that people made? All
17 that stuff.

18 A. Yes.

19 Q. Okay. And would you agree with me, in
20 addition to that, there were all sorts of law
21 enforcement reports and other reports that were
22 generated in connection with the case?

23 A. Yes.

24 Q. And let me go back a second. When you got
25 the discovery, how did you get it? How did it come

1 to you so you could read it and listen to it?

2 A. On the iPad, like on the pad, I guess, the
3 Government --

4 Q. It came on what's called a computer
5 tablet?

6 A. Yes.

7 Q. And is that something -- had you ever had
8 a tablet like that before?

9 A. No, I didn't know how to use it, so I had
10 to -- took a while.

11 Q. So you learned how to use it while you're
12 sitting there in your jail cell?

13 A. Yes.

14 Q. And you were able to use it; right?

15 A. Yes, after a while.

16 Q. And you used it to listen to all the
17 materials you were provided. Or a lot of them.

18 A. There is so much, there is no way to go
19 through all of it. But yeah, I did some, yes.

20 Q. Now, on your tablet you were only charged
21 in that one case regarding the assaults, on Mr.
22 Silva; right?

23 A. Yes.

24 Q. On your tablet, did you get only the
25 discovery materials related to the Silva assault, or

1 did you get stuff related to all the cases the
2 Government brought on December 3?

3 A. I got everything to everybody, yes.

4 Q. You got everything.

5 A. Everything to everybody's case that's on
6 there, yes.

7 Q. So it wasn't limited to your case.

8 A. No.

9 Q. And you were free to go through materials
10 that related to other people's cases.

11 A. Yes.

12 Q. And you could do that 24 hours a day,
13 seven days a week, if you wanted to?

14 A. Yes.

15 Q. Is it fair to say that you looked at the
16 materials that related to the homicide of Javier
17 Molina, the thing that we're talking about here
18 today?

19 A. Yes, I did.

20 Q. And you listened to audios that were
21 related to that case?

22 A. Some of them, yeah.

23 Q. And you looked at videos?

24 A. Yes.

25 Q. And you read witness statements related to

1 that case?

2 A. Yes.

3 Q. Even though -- okay. And as you did that,
4 did you become aware that it was the Government's
5 claim or the Government's theory that somehow
6 paperwork must have been transferred from the
7 Penitentiary of New Mexico down to Southern New
8 Mexico Correctional Facility shortly before the
9 homicide?

10 MR. BECK: Objection, hearsay, Your Honor.

11 MS. JACKS: I'm asking about his state of
12 mind.

13 THE COURT: Overruled.

14 A. Repeat the question.

15 BY MS. JACKS:

16 Q. Yeah, I'm asking, based on your review
17 that you conducted on these materials about the
18 Molina homicide --

19 A. Yes.

20 Q. -- did you become aware that the
21 Government was trying to claim that some paperwork
22 came down just before Molina was killed?

23 A. I knew that because I took it.

24 Q. Well, you're saying you took it.

25 A. I knew that on there, too. I seen it,

1 yes.

2 Q. So you knew that was something the
3 Government was interested in.

4 A. Yes.

5 Q. I'm going to pause here a second because I
6 want to talk to you a little bit about how you made
7 the decision to become a Government witness.

8 A. Okay.

9 Q. And I guess really what we're focusing on
10 is that meeting with Lupe Urquizo on August 22 of
11 2017; right?

12 A. Okay, yes.

13 Q. And you were brought down to the FBI
14 office in Albuquerque on that date?

15 A. Yes.

16 Q. And you told us that you met with Lupe
17 before you met with the Government agents?

18 A. Yes.

19 Q. Now, at that time -- so in August of
20 2017 -- what was your relationship with Lupe
21 Urquizo?

22 A. He's a good friend of mine from back from
23 my hometown.

24 Q. So was he a close friend?

25 A. Pretty close, yes.

1 Q. One of the people in -- one of the people
2 that you know that you're closest to?

3 A. Yes.

4 Q. And I think you told us last week about a
5 fight that you had with some correctional officers.
6 I guess you had a few. It's the one where I think
7 you sprayed some feces on a female guard who was
8 giving you attitude?

9 A. It was for him, because of him.

10 Q. I just want to be clear about that. Was
11 that a fight that you got into to defend Lupe
12 Urquizo's honor?

13 A. No. To defend the S's honor, yes.

14 Q. And was it a fight that you got involved
15 with because of your relationship with Lupe Urquizo
16 specifically?

17 A. That and because he's a brother.

18 Q. And had Mr. Urquizo also represented you
19 in disciplinary hearings within the prison system in
20 the past?

21 A. I think one.

22 Q. So he was someone that you had come to
23 rely on. Is that fair to say?

24 A. Yes.

25 Q. Now, when you met with him in the FBI

1 office, were there any FBI agents present in the
2 room, or were you guys allowed to talk with each
3 other without law enforcement present?

4 A. No, our lawyers were in there.

5 Q. But your lawyers aren't law enforcement;
6 right? They're representing you.

7 A. No, they were standing outside the door.

8 Q. Just so I'm clear, law enforcement was
9 outside the door?

10 A. Yes.

11 Q. But they weren't inside the room
12 participating in the conversation.

13 A. No.

14 Q. And during that meeting, did Lupe tell
15 you, "Look, this is your opportunity to avoid being
16 charged with a case that carries a life sentence"?

17 A. Yeah, he said it would help. It would
18 help, you know.

19 Q. Did he tell you you were going to be faced
20 with a choice where you were going to either have to
21 be a witness for the Government or a defendant in a
22 case where you could get life imprisonment?

23 A. I was already facing that, so it wasn't
24 really...

25 Q. Well, you weren't facing life.

1 A. Not that, you know.

2 Q. Let's just be clear. The assault on Mr.
3 Silva --

4 A. Yes.

5 Q. -- and the conspiracy to murder Mr.
6 Silva -- that case didn't carry a sentence of life,
7 did it?

8 A. After 30 years, it might as well be 150.

9 Q. But we want to give the jury -- at least I
10 want to give the jury the correct information. What
11 you're saying is: 30 years may as well be life to
12 you?

13 A. I'll be 80-some years old. Who wants to
14 get out at that age?

15 Q. But you would agree with me that 30 years
16 is not a life sentence?

17 A. It is to some.

18 Q. So Urquizo told you, "Look. This is your
19 opportunity and if you become a Government witness,
20 you're going to get some benefit in terms of your
21 case."

22 A. Yes.

23 Q. And in terms of not being charged with a
24 new case, the murder of Javier Molina.

25 A. No.

1 Q. He didn't say that?

2 A. No. He didn't talk about that.

3 Q. Did Mr. Urquizo tell you about other
4 benefits that the Government was willing to provide
5 if you signed up as a witness, like money, or
6 increased privileges, or family visits?

7 A. Privileges and visits. He didn't mention
8 money, no.

9 Q. But he mentioned that you would have
10 better living conditions if you signed up to be a
11 Government witness?

12 A. Yes. It depends where I went, he said.
13 He said -- what he said is, "It's good over there
14 where I'm at. You should try to ask them to put you
15 over there. I got my TV." Yeah, there was real
16 benefits.

17 Q. So he was pleased with the benefits that
18 he had received, and he thought you would be
19 similarly pleased?

20 A. Not all the way. We're still in a box,
21 you know, so...

22 Q. But my point is that what Mr. Urquizo was
23 telling you was that "If you sign up -- I'm getting
24 some stuff and you would want the stuff I'm getting,
25 so you should sign up."

1 A. Yeah, I guess, in a way.

2 Q. Did he tell you in that meeting that he
3 had told the Government that he was the person who
4 carried the paperwork from the Penitentiary of New
5 Mexico to Southern New Mexico Correctional Facility?

6 A. I already knew that, because I'm the one
7 that gave it to him.

8 Q. Did he tell you in that meeting that he
9 told that to the Government, is my question.

10 A. I think he might have mentioned that.

11 Q. Okay. And did he also tell you that he
12 told the Government that you're the one who gave it
13 to him?

14 A. Yes, he probably mentioned that.

15 Q. After that meeting with Lupe Urquizo, did
16 you make a decision in your mind, All right, I'm
17 going to be a Government witness; I'm going to be a
18 witness and not a defendant?

19 A. Yeah, probably around that time. I think
20 I had decided before that, you know.

21 Q. But that sealed the deal, the conversation
22 with Mr. Urquizo?

23 A. I was already on the way out. It was just
24 like a surprise stop there, you know. He was
25 already there when he got there, so I wouldn't be

1 taking that ride in the first place if I hadn't
2 decided something, you know.

3 Q. Okay. Well, did it make you, I guess,
4 feel more comfortable with the decision?

5 A. There you go.

6 Q. And more enthusiastic about moving
7 forward?

8 A. Yeah. That would be the word.

9 Q. Now, I want to talk to you about this
10 testimony you gave last week about getting the
11 paperwork from Cheech.

12 A. Right.

13 Q. Okay? So what you say -- what you told us
14 last week, what you claimed last week was that
15 Cheech gave you some paperwork on Molina; right?

16 A. Right.

17 Q. And you claim that you took that from PNM
18 North facility to PNM South facility.

19 A. Yes.

20 Q. And that you ultimately gave it to Mr.
21 Urquizo.

22 A. Yes.

23 Q. Now, I just want to go back and talk a
24 little bit about Cheech. Do you know who Cheech is,
25 his real name?

1 A. I don't know his real name. I'm thinking
2 Martinez is his last name, but I'm not sure. I've
3 known him all his life as Cheech.

4 MS. JACKS: Your Honor, I have a one-page
5 document, Bates No. 14077, that purports to have a
6 picture on it of an individual identified as Joe Pat
7 Martinez. I'd like to just have this marked to show
8 the witness as the defense next in order.

9 THE COURT: What do you want it marked as?

10 MS. JACKS: I'm told our next is EP. E as
11 in emergency, P as in Paul. May I approach?

12 THE COURT: You may.

13 A. Yeah.

14 BY MS. JACKS:

15 Q. Do you want to look any further?

16 A. I know that's him.

17 Q. So showing you this picture, is that the
18 person that you know as Cheech?

19 A. Yes.

20 Q. And is his name Joe Pat Martinez?

21 A. Yeah, I guess that's his name. I don't
22 know. Like I said, I have known him by Cheech all
23 his life.

24 Q. And you recognize him from this picture on
25 this piece of paper, Exhibit EP?

1 A. Yes.

2 Q. Were you ever housed in the same housing
3 pod as Cheech?

4 A. No. He was always in the next pod.

5 Q. And I think you told us last week that he
6 passed -- you're saying he passed you paperwork when
7 you were both housed in unit 1-B at PNM North?

8 A. Yes.

9 Q. And is that -- did unit 1-B have
10 recreation at the same time?

11 A. Yes. We would go out with other pods.
12 Sometimes it would reach to certain pods. This one
13 whole pod and half of the next one, or something
14 like that.

15 Q. How many pods were in unit 1-B at that
16 point?

17 A. I think there was four.

18 Q. So sometimes you would recreate with
19 people from other housing pods in that same unit
20 1-B?

21 A. Yes.

22 Q. So that's how you're saying you had this
23 contact with Cheech?

24 A. Yes.

25 Q. All right. And when Ms. Duncan was asking

1 you questions last week, I think she asked you
2 how -- when was this supposed transfer of paperwork
3 in relation to you getting out of the PNM North and
4 heading to the South. Do you recall those
5 questions?

6 A. That was, like, right before -- like I
7 said, I'm bad with dates. But I know it was within
8 three months, four months, within that time before I
9 left back to the South.

10 Q. Okay. And I think on Friday you said four
11 to five. So the bottom line is: It was fairly
12 shortly before you got transferred to the South that
13 you're saying this happened?

14 A. Yes.

15 Q. And at the time that you say Cheech gave
16 you this paperwork, did you know that you were going
17 to be transferred out of PNM North to the South?

18 A. I figured I was close because I was
19 fighting it to come back out, yes.

20 Q. So was that part of the reason you're
21 claiming that Cheech had this reason to give you the
22 paperwork, because he knew you were going to be
23 moved?

24 A. Yes.

25 Q. And I just want to put some -- I want to

1 try to understand the timeframe when you ended up in
2 unit 1-B. And I think you might have been asked
3 those questions last week by Mr. Beck. Did you go
4 to PNM North, unit 1-B, after the attack on Paul
5 Silva?

6 A. Yes.

7 Q. Or within a few weeks after the attack on
8 Paul Silva?

9 A. Yes.

10 Q. And Mr. Silva -- what was the date that
11 you attacked Mr. Silva?

12 A. I think it might have been March, sometime
13 in March, maybe the 15th. I'm not sure.

14 Q. March 14, 2011?

15 A. That might be.

16 Q. Does that sound right?

17 A. Sounds right, Yes.

18 Q. Then the next day you went to PNM North?

19 A. Yes.

20 Q. And sometime shortly after that, you were
21 assigned to unit 1-B?

22 A. Yes.

23 Q. Do you remember the date that you were
24 transferred from PNM North to the South? When you
25 got out of PNM North?

1 A. I don't remember the date, Miss.

2 Q. Okay. Was it a few weeks before the
3 Molina homicide?

4 A. No, I think it was that week.

5 Q. Was it in 2014 sometime?

6 A. When I took the paperwork; right?

7 Q. When you got transferred from PNM North to
8 PNM South.

9 A. It might have been, yes.

10 Q. Does the New Mexico Department of
11 Corrections keep records about where you were housed
12 when and where you're transferred?

13 A. Yes.

14 Q. Have you seen those records?

15 A. No.

16 Q. Do you think if you looked at those
17 records, that might help refresh your memory as to
18 when you were moved around to various places?

19 A. Like I said, I'm doing bad. I can't keep
20 up with the dates. I never kept track of that
21 because the time drags, so I just...

22 Q. So my question is -- I happen to have
23 those records.

24 A. Okay.

25 Q. Do you think if you looked at them, that

1 might help you be more accurate in court --

2 A. Maybe.

3 Q. -- and refresh your memory about when you
4 were moved?

5 A. Yeah, maybe.

6 MS. JACKS: Your Honor, I'd like to
7 approach and show the witness a document previously
8 marked V6. And I'm not intending to publish it to
9 the jury at this time.

10 THE COURT: V?

11 MS. JACKS: V as in Victor. May I
12 approach?

13 THE COURT: You may.

14 BY MS. JACKS:

15 Q. I'm going to put this --

16 A. Where are we talking about?

17 Q. Give me a second, Mr. Calbert. I'm going
18 to help you. I know that's a lengthy document. So
19 first of all, let's take a look at this document and
20 I just want you to take a look at the entry for
21 March 15, 2011. And that's about halfway down the
22 first page.

23 A. Okay.

24 Q. Just tell me when you have found it.

25 A. All right. I've got it.

1 Q. Okay. So does that refresh -- can you
2 look up to me for a second? Does that refresh your
3 memory as to when you were transferred to PNM North
4 after the assault on Paul Silva?

5 A. Okay. Yeah.

6 Q. And was that March 15, 2011?

7 A. Yes.

8 Q. Let's go up the page and look at the
9 entries to February 13, 2014. Don't tell me what
10 they say, but just take a look at them. You're
11 going to go up the page. Do you want me to come and
12 point it out to you?

13 A. Yeah. Would you?

14 Q. Yeah, sure. It's hard if you don't have a
15 finger to --

16 A. Yeah, I can't.

17 Q. So look -- I'm just going to mark a little
18 star by it.

19 A. All right.

20 Q. Have you had a chance to look at that?

21 A. Yes.

22 Q. All right. So does that refresh your
23 memory as to when you got out of the PNM North and
24 went back to the South?

25 A. Yes.

1 Q. And did that happen on February 13 of
2 2014?

3 A. Yes.

4 Q. Okay. And can you look at the entry just
5 below those entries that I just marked?

6 A. Okay.

7 Q. And does that refresh your memory that
8 just prior to your transfer from PNM North to PNM
9 South on February 13 of 2014, you were housed in the
10 North unit 1-B?

11 A. Yes.

12 Q. And were you housed there from May 2 of
13 2013 to February 13 of 2014?

14 A. Yes.

15 Q. Okay. So if you got the paperwork, like
16 you've told us, from Cheech about four to five -- or
17 three, four, five months before you were transferred
18 back to the South facility, is that when that
19 transfer would have had to happen?

20 A. I'd say within that time.

21 Q. Okay. So within that time period.
22 Between -- sometime between May 2 of 2013 and when
23 you were transferred to the South on February 13 of
24 2014?

25 A. Yeah -- no, you're going to get me with

1 the dates, you know.

2 Q. Well, the purpose of showing you those
3 records was to see if that refreshed your memory as
4 to the dates.

5 A. I guess it don't. You're going to get me
6 with the dates. You know what I mean? Like I said.

7 Q. So I want to talk to you specifically
8 about this conversation you said you had with Cheech
9 when he supposedly gave you the paperwork. Okay?

10 A. Okay.

11 Q. I think what you told us last week is you
12 were out in a recreation cage and he was in the cage
13 next to you.

14 A. He was walking by.

15 Q. He was walking by your cage on the way to
16 his?

17 A. Yeah, coming outside.

18 Q. Was he being escorted by correctional
19 officers?

20 A. Yes.

21 Q. And so according to your story, the
22 correctional officers paused and let him converse
23 with you?

24 A. No, he just stopped and slid the paper
25 through the hole like that.

1 Q. And I think what you told us last week,
2 that based on your story, the paper was rolled up
3 kind of like a straw?

4 A. It was wrapped up in his hand, rolled up,
5 because he's handcuffed in the back, so he can't
6 just carry it regularly so...

7 Q. So are you saying it was rolled
8 lengthwise, so it was long and thin?

9 A. Not thin enough to stick through the
10 little holes, but thin enough to stick through the
11 slot by the door.

12 Q. And it was cylindrical, according to your
13 story.

14 A. Yes.

15 Q. And if you -- well, correct me if I'm
16 wrong. I think you told us last week that it was a
17 single page of paper?

18 A. There was two of them. I'm pretty sure
19 there was two.

20 Q. Now you're saying there was two?

21 A. I'm pretty sure there was two.

22 Q. Did you tell us on Friday that it was one
23 page?

24 A. I don't remember that.

25 Q. And initially, did you agree to transfer

1 the paperwork?

2 A. At first, no. And then after a while, I
3 said yes.

4 Q. So how long did you stand there? How long
5 do you claim you stood there and talked with Cheech?

6 A. To the hour. It was an hour yard, so...

7 Q. Okay. So maybe -- so according to what
8 you're telling us, you're claiming he stuck the
9 paperwork through the cage and then somehow you had
10 a chance to talk to him after that?

11 A. Yes.

12 Q. Because he was in the neighboring cage.

13 A. Yes.

14 Q. And initially you told him, "I'm not doing
15 that"; right?

16 A. Yeah, because I said, "This ain't really
17 nothing, you know? I don't want to start any
18 trouble. You know what I mean? For something so
19 small."

20 Q. Okay. So in an effort to convince you
21 that you needed to take this paperwork, Cheech
22 dropped Mr. Baca's name, didn't he?

23 A. Yes.

24 Q. You don't know if that was -- if Baca had
25 really told Cheech to do anything, do you?

1 A. No.

2 Q. It was just an effort by Cheech to get you
3 to do what he wanted you to do.

4 A. Could have been.

5 Q. According to your testimony, did you
6 unroll the paperwork and read it there while you
7 were in the rec cage next to Cheech?

8 A. Yes, I just real quick glanced over.

9 Q. And you're saying you took it back to your
10 cell; right?

11 A. Yes.

12 Q. And you had it for some period of time
13 before you got transferred to PNM South, didn't you?

14 A. Yes.

15 Q. So you read it, didn't you?

16 A. Yes, I read it.

17 Q. You looked at it?

18 A. Yes.

19 Q. And I want to ask you some questions about
20 what the paperwork supposedly looked like. Was it
21 typed? Printed? Handwritten?

22 A. It was typed.

23 Q. And was it on -- was it on a blank sheet
24 of paper, just like a white sheet of paper, or was
25 it on paper that had lines or some sort of type of

1 form?

2 A. Yeah, like a piece of Government paper,
3 you know what I mean? Like typed, you know.

4 Q. It was typed, but I want to talk about --

5 A. A police report. Like a police report.

6 Q. So was it -- did you see, like, a stamp of
7 a police agency on it, or a logo somewhere on the
8 paper?

9 A. I'm pretty sure there was a stamp at the
10 end or where some signature was, but --

11 Q. There was a stamp or a signature at the
12 end?

13 A. It was a signature with a stamp at the
14 end, but I couldn't remember exactly what it was.

15 Q. Do you know what kind of signature? Was
16 it supposedly Mr. Molina's signature or a police
17 officer's signature or --

18 A. I can't remember.

19 Q. What color was the printing? Was it all
20 black and white, or was there color?

21 A. Black and white, and then I think at the
22 end there was some blue, maybe red at the end. I'm
23 not sure.

24 Q. So you recall seeing black and white and
25 blue and red on the paper?

1 A. Yeah, on the stamp.

2 Q. According to you?

3 A. Yeah.

4 Q. And what sort of information was contained
5 in the paperwork about the crime that Mr. Molina had
6 been involved in? Anything?

7 A. Yes, it just said that he was parked in
8 the Audi, and they went and robbed some lady and
9 robbed purses. And I can't remember word for word,
10 but that's about -- something like that.

11 Q. Have you said in the past that it
12 described a purse-snatching?

13 A. Some kind of robbery, yeah.

14 Q. My question is: Have you said in the past
15 that it was a purse-snatching?

16 A. Yes.

17 Q. So what does a purse-snatching mean to
18 you?

19 A. I guess a robbery or strong-arm robbery,
20 I'm not sure.

21 Q. So a strong-armed robbery is -- a robbery
22 is taking property from somebody by force or fear;
23 right?

24 A. Yes.

25 Q. So a strong-armed robbery would be a

1 robbery where you don't use a weapon; you just use
2 pure physical force?

3 A. I can't say it wasn't with a weapon or
4 not. I can't remember that. It's been a long time.

5 Q. When you say purse-snatching and
6 strong-armed robbery, does that mean to you that
7 somebody goes by where a lady is carrying a purse
8 and jerks it off her shoulder?

9 A. I'm not saying that's what it was. I'm
10 saying that's what it came back with, that they said
11 it came back with purses and I don't know what else.

12 Q. And according to your story, what was it
13 or who was it that Molina supposedly said something
14 to?

15 A. I guess it was law enforcement, when they
16 went and arrested him.

17 Q. Well, what did the paperwork that you say
18 you saw say?

19 A. Like I said, I can't remember word for
20 word. Just -- what I told you is all I remember.

21 Q. Can you remember anything about what he
22 supposedly said that was supposedly reflected on
23 this paperwork?

24 A. He was saying what everybody's part was in
25 that robbery. He just said that he stayed in the

1 car; he was the one driving.

2 Q. And who did he supposedly say that to,
3 according to this paperwork that you said you read?

4 A. To who or about?

5 Q. To whom?

6 A. I guess a police officer, I guess.

7 Q. I'm not asking you to guess. I'm
8 asking --

9 A. I don't know. I would have to guess, if
10 that was the question.

11 Q. I'm asking you what the paperwork that you
12 say you saw said.

13 A. I just finished telling you.

14 Q. You don't know.

15 A. No. I told you what I know. That's what I
16 remember.

17 Q. All right.

18 MS. JACKS: Your Honor, I have four
19 certified copies of judgment, sentence, and
20 commitment for Mr. Calbert, and I'd just ask that
21 those be marked and entered at this time.

22 THE COURT: All right. Give me the
23 numbers for them.

24 MS. JACKS: It's AC, as in Apple Charley,
25 1 through 4. And the first one is from March 25,

1 1998; the second one is December 3, 1999; the third
2 one is January 11, 2006; and the last one, number 4,
3 is November 2, 2007.

4 THE COURT: Any objection, Mr. Beck?

5 MR. BECK: No objection.

6 THE COURT: Any objection from any
7 defendant?

8 MS. BHALLA: No, Your Honor.

9 THE COURT: Hearing none, Defendants'
10 Exhibits AC1, AC2, AC3, and AC4 will be admitted
11 into evidence.

12 (Defendants' Exhibits AC1, AC2, AC3, and
13 AC4 admitted.)

14 MS. JACKS: Thank you. I have nothing
15 further.

16 THE COURT: Thank you, Ms. Jacks.

17 Ms. Bhalla, do you have some questions?

18 MS. BHALLA: I do, Your Honor.

19 THE COURT: Certainly.

20 CROSS-EXAMINATION

21 BY MS. BHALLA:

22 Q. Mr. Calbert, you testified a little bit
23 about the transfer of the paperwork at PNM North,
24 and I had a couple of other questions for you about
25 that.

1 Last week -- I believe it was on Friday --
2 you mentioned when you were housed at PNM North, you
3 had a three-guard escort; is that correct?

4 A. Yes.

5 Q. And that was because of all the assaults
6 that you had with COs; is that correct?

7 A. Yes.

8 Q. And so is it fair to say that you were
9 supervised fairly closely when you were at PNM?

10 A. No. At times.

11 Q. Yeah. Well, it's the most secure prison
12 system that you can go to, right, in New Mexico?
13 It's Level 6?

14 A. Yeah. A lot of things happen there, so I
15 guess you could call it that, I guess.

16 Q. Okay. And when Cheech was brought out --
17 I just want to make sure I understand this -- he was
18 cuffed behind?

19 A. Yes.

20 Q. So he was walking this way?

21 A. Yes, this way past me.

22 Q. Past you? How many guards were with him?

23 A. One.

24 Q. How many guards are out in the recreation
25 area? Ten, twenty, thirty?

1 A. None.

2 Q. None?

3 A. That one taking him. They just changed to
4 two guards now. Now that things have been
5 happening, they finally changed the policy to have
6 two COs for everything.

7 Q. Okay. But when he was walking with
8 Cheech, Cheech was cuffed behind his back?

9 A. Yes.

10 Q. And there was a CO walking with him?

11 A. Yes.

12 Q. And it's your testimony that, like this,
13 with a CO with him --

14 A. Yes.

15 Q. -- he passed the paperwork to you through
16 the fence?

17 A. There you go. Yes.

18 Q. And nobody did anything about that?

19 A. No.

20 MS. BHALLA: Nothing further, Your Honor.

21 Thank you.

22 THE COURT: Thank you, Ms. Bhalla.

23 Mr. Beck, do you have redirect of Mr.

24 Calbert?

25 MR. BECK: Yes, Your Honor.

1 THE COURT: Mr. Beck.

2 REDIRECT EXAMINATION

3 BY MR. BECK:

4 Q. Mr. Calbert, I'm showing you the addendum
5 to your plea agreement. Do you remember when we
6 talked about that on Friday?

7 A. Yes.

8 Q. And in paragraph 2, what does that
9 paragraph say to you? What does it mean to you?

10 A. That I have to say -- talk truthful and
11 the truth.

12 Q. What happens if you don't talk truthfully
13 and say the truth?

14 A. Then everything is off, you know. I don't
15 get no benefits from nothing, you know.

16 Q. Does that include the plea agreement that
17 you pled guilty to, for which you faced only 30
18 years?

19 A. Yes.

20 Q. Does that mean that we can go back, the
21 Government can go back and charge you with the
22 Molina murder if you don't testify truthfully?

23 A. Yes.

24 Q. On August 22, 2017, when you came to the
25 FBI in Albuquerque, had you already decided to

1 cooperate?

2 A. Yes.

3 Q. Did you ask to meet with Lupe Urquizo?

4 A. I didn't, no. But he was there, so he
5 asked.

6 Q. And when you talked to him about this
7 case, did you find out he told us the truth?

8 A. Yes.

9 Q. Did that include that you passed the
10 paperwork to him?

11 MS. FOX-YOUNG: Your Honor, objection,
12 leading. It's been leading for a little while.

13 A. Yes.

14 THE COURT: Overruled.

15 BY MR. BECK:

16 Q. Sorry. Did that include that you passed
17 the paperwork to him?

18 A. Yes.

19 Q. Now, I think you talked a little bit about
20 cooperation. Is cooperation what you're doing now?

21 A. Yes.

22 Q. What are you doing now?

23 A. I'm testifying.

24 Q. And what's the punishment in SNM for
25 cooperating?

1 A. It's death.

2 Q. I think you talked with -- talked here on
3 cross-examination about Mr. Perez talking about
4 providing his walker. Did he talk about this to
5 you? Did he talk about the case only once, or did
6 he talk about the case multiple times while you were
7 together?

8 MS. JACKS: Your Honor, I request a
9 limiting instruction.

10 THE COURT: All right. This evidence that
11 Mr. Beck is about to elicit can only be used against
12 Mr. Perez. It cannot be used against any of the
13 other three gentlemen in the courtroom, the other
14 defendants.

15 All right, Mr. Beck.

16 BY MR. BECK:

17 Q. Did Mr. Perez talk about this case only
18 once, or did he talk about it multiple times?

19 A. Every time he was in the shower, every
20 time he got around people. Couldn't shut him up.

21 Q. I think with Ms. Jacks you were talking
22 about the Paul Silva assault that you pled guilty
23 to. Do you remember that?

24 A. Yes.

25 Q. When you told Corey Henn that you did it

1 only for personal reasons, why did you tell him
2 that?

3 A. Because I was required to; because you
4 don't talk to law enforcement. If they find out, it
5 comes out on paper, and they'll kill you.

6 Q. Who required you to, and who would kill
7 you?

8 A. Just SNM in general.

9 Q. With the SNM, were COs extremely strict
10 with y'all as the SNM, or were they a little bit
11 more permissive with you all as the SNM?

12 A. Depends who we were dealing with.

13 Q. Were they scared of you?

14 A. Yes.

15 MS. DUNCAN: Objection, Your Honor. Calls
16 for speculation.

17 THE COURT: Well, if he knows.

18 BY MR. BECK:

19 Q. Do you know whether they were scared of
20 you?

21 A. Yes.

22 Q. Were they scared of you?

23 A. Yes.

24 MS. DUNCAN: Your Honor, I don't know how
25 he knows. Objection, and ask it be struck.

1 THE COURT: Lay a foundation how he knows
2 that.

3 BY MR. BECK:

4 Q. How do you know?

5 A. He just said, dangerous --

6 MS. DUNCAN: Your Honor, I --

7 THE COURT: Sustained.

8 MS. JACKS: Move to strike the previous
9 answer.

10 THE COURT: I'll strike the previous
11 answer.

12 BY MR. BECK:

13 Q. In your interactions with COs, do you
14 believe they're afraid of you, not from what they
15 said; just from what they did.

16 MS. DUNCAN: Your Honor, I'm going to
17 object.

18 THE COURT: If he can say what they did,
19 only from what they did, not what he was told, he
20 can answer.

21 But why don't you lay a foundation that
22 he's going to testify just from his knowledge of
23 what they said?

24 BY MR. BECK:

25 Q. You said that -- I think earlier you said

1 you were escorted by three COs when you walked out
2 to the yard; is that right?

3 A. Yes.

4 Q. Did you observe how COs interacted and
5 acted with non-SNM inmates?

6 A. Yes.

7 Q. Did they act differently when they were
8 around you?

9 A. Yes.

10 Q. Did they act differently when they were
11 around the SNM?

12 A. Yes.

13 Q. How did they act differently?

14 A. They were just real scared. They just
15 didn't talk back. They would talk to other inmates,
16 but they wouldn't say things and do things with all
17 of us, you know what I mean, like they do with all
18 the other inmates.

19 Q. Does this include when they walked SNM
20 members out to the yard?

21 A. Yes.

22 Q. Mr. Calbert, if you know, what is Spider
23 in Spanish?

24 A. La araña.

25 MR. BECK: May I have a moment, Your

1 Honor?

2 THE COURT: You may.

3 MR. BECK: Nothing further, Your Honor.

4 Thank you, Mr. Calbert.

5 THE COURT: Thank you, Mr. Beck.

6 Do you have something, Ms. Duncan?

7 MS. DUNCAN: I do, Your Honor, if I could
8 just have a moment.

9 THE COURT: Ms. Duncan.

10 RECROSS-EXAMINATION

11 BY MS. DUNCAN:

12 Q. Mr. Calbert, you testified that
13 correctional officers were afraid of you; correct?

14 A. Yes.

15 Q. And that there were three-men escorts to
16 move you around PNM North; correct?

17 A. Sometimes.

18 Q. And you repeatedly stabbed two
19 correctional officers; right?

20 A. Yes.

21 Q. And you threw feces at another
22 correctional officer?

23 A. Yes.

24 MS. DUNCAN: Thank you. I have no further
25 questions.

1 THE COURT: Thank you, Ms. Duncan.

2 Mr. Beck, anything further?

3 MR. BECK: Nothing further, Your Honor.

4 THE COURT: Mr. Calbert, you may step
5 down.

6 MS. FOX-YOUNG: Your Honor, we'd like to
7 reserve this witness.

8 THE COURT: All right. You'll remain
9 outside of the courtroom, but you are subject to
10 re-call. Thank you for your testimony.

11

12 THE COURT: All right. Does the
13 Government have its next witness or evidence?

14 MR. CASTELLANO: Yes, Your Honor. The
15 United States calls Norman Rhoades.

16 THE COURT: Mr. Rhoades, if you'll come up
17 and stand next to the witness box on my right, your
18 left, before you're seated, Ms. Standridge, my
19 courtroom deputy, will swear you in.

20 NORMAN RHOADES,
21 after having been first duly sworn under oath,
22 was questioned, and testified as follows:

23 THE CLERK: Please be seated. State and
24 spell your name for the record.

25 THE WITNESS: My name is Norman Rhoades.

1 THE COURT: Mr. Rhoades.

2 Mr. Castellano.

3 MR. CASTELLANO: Thank you, Your Honor.

4 May I have a moment? I need to make an arrangement
5 for the introduction of some of these exhibits.

6 DIRECT EXAMINATION

7 BY MR. CASTELLANO:

8 Q. Good morning.

9 A. Good morning.

10 Q. Please introduce yourself to the members
11 of the jury.

12 A. My name is Norman Rhoades.

13 Q. What do you do for a living?

14 A. I'm employed with the New Mexico State
15 Police.

16 Q. And can you tell us a little bit about
17 your training and experience?

18 A. I've been employed with the State Police
19 for -- I just passed my 37th year last December.
20 Currently I'm assigned to our full-time Crime Scene
21 Unit. I started in that position in 2005 when they
22 went full-time Crime Scene Unit.

23 Q. All right. What did they do before they
24 made the Crime Scene Unit in 2005?

25 A. Prior to that we -- I was assigned to

1 investigations after I spent some time on patrol.
2 And in those days, we carried a caseload, but we
3 also did our own crime scene processing. So we kind
4 of had dual responsibilities.

5 Q. And what other positions have you held in
6 the New Mexico State Police?

7 A. Well, like I say, I spent about 18 years
8 and some on the highways in uniform. Then I went
9 into investigations. I've been involved with
10 training and I was, years ago, assigned to our bomb
11 unit, our bomb team, and then I was a field training
12 officer. Various positions like that.

13 Q. What do field training officers do?

14 A. They're assigned to -- and this is several
15 years ago. Procedures have changed now. But in
16 those days, field training officers were assigned to
17 ensure that each commissioned officer within a
18 district had received the required amount of
19 training. And that requirement was set by the Law
20 Enforcement Academy.

21 THE COURT: Mr. Castellano, we've been
22 going for a while. Would this be a good time for us
23 to take our break?

24 MR. CASTELLANO: Yes, Your Honor.

25 THE COURT: All right. Let's take a

1 recess for about 15 minutes. All rise.

2 (The jury left the courtroom.)

3 THE COURT: All right. I guess the Dona
4 Ana County Detention Center advises the best they
5 can do is check Mr. Perez' vitals and give him Pepto
6 Bismol. Health services administration advises it
7 is best Mr. Perez be taken to the ER to be tested
8 for the flu and given better meds for diarrhea than
9 Pepto Bismol and possibly an IV to rehydrate him.
10 The Marshal Service can get Mr. Perez to the
11 hospital over the lunch, so what we'll do, we'll
12 take a 15-minute break. We'll go the morning and
13 then we'll take a little bit earlier break if we can
14 get in and out pretty quickly, and get him to an ER
15 during the lunch hour, and we'll just have to wait
16 and see how long it takes.

17 MR. VILLA: Yes, sir. I've been privy to
18 those emails from Mr. Castro. I'd also ask him to
19 call ahead to the ER, and assuming they don't have
20 any more serious emergencies, let them know that his
21 health does not seem to be improving. It seems to
22 be the same or getting worse.

23 THE COURT: If you want to call ahead,
24 tell them we'll take a break about 11:45. Get him
25 over there. Fifteen minutes. And then we'll just

1 wait.

2 THE MARSHAL: Will do, Your Honor.

3 MR. VILLA: Thank you, Judge.

4 (The Court stood in recess.)

5 THE COURT: Ready to go? All rise.

6 (The jury entered the courtroom.)

7 THE COURT: All right. Everyone be
8 seated.

9 All right, Mr. Rhoades, I'll remind you
10 that you're still under oath.

11 Mr. Castellano, if you wish to continue
12 your direct examination of Mr. Rhoades, you may do
13 so at this time.

14 MR. CASTELLANO: Thank you, Your Honor.

15 THE COURT: Mr. Castellano.

16 BY MR. CASTELLANO:

17 Q. What is your current rank or title?

18 A. Agent.

19 Q. Agent Rhoades, what types of training have
20 you had in processing crime scenes?

21 A. I've had training in various disciplines
22 of crime scenes, including bloodstain pattern
23 analysis, crime scene reconstruction, shooting scene
24 reconstruction, latent prints, evidence
25 identification, collection, preservation. Just a

1 lot of various types of things that deal with crime
2 scene processing.

3 Q. What's the importance of trying to
4 minimize the number of people who walk through a
5 crime scene?

6 A. Primarily for cross-contamination of
7 evidence.

8 Q. So in other words, if you minimize the
9 number of bodies, you minimize the chances that
10 there will be cross-contamination of what's in the
11 crime scene?

12 A. That's correct.

13 Q. Were you on duty on March 7, 2014?

14 A. Yes, I was.

15 Q. What were your responsibilities on that
16 day?

17 A. On that day I was again assigned to the
18 Crime Scene Unit.

19 Q. Do you recall getting called out to the
20 Southern New Mexico Correctional Facility in Las
21 Cruces?

22 A. Yes, I do.

23 Q. Why were you called out there?

24 A. I was called out to process a crime scene
25 inside one of the units involving a death

1 investigation.

2 Q. So given your position as a crime scene
3 investigator, what would your responsibilities be on
4 that occasion?

5 A. I would get an idea of what the crime
6 scene consisted of so I would know what to take out
7 to the units and as far as things I would need. And
8 that's dealing with the type of evidence that would
9 be available. And at that point, then, I load
10 everything into my unit. We have a crime scene
11 truck that has all of our supplies, but for scenes
12 out at the correctional facilities, I don't take the
13 truck, because usually we're escorted back inside.
14 So I try to get everything I can just to make one
15 trip in.

16 Q. And what was the process you intended to
17 use to collect evidence on that occasion?

18 A. Well, for the items that we took in for
19 evidence collection and identification would be, of
20 course, our camera, things dealing with the
21 collection of blood; sharp, pointed instruments;
22 then, of course, collection bags and stuff for any
23 other types of larger type of evidence.

24 Q. And once you got to the facility, what did
25 you consider your crime scene?

1 A. Once I got the briefing and a walk through
2 the crime scene, it was pretty much within a pod.
3 There was three pods within this unit, and the scene
4 was inside one pod.

5 Q. I'm going to show you what's been admitted
6 previously as Government's Exhibit 13. Do you
7 recognize that exhibit, Agent Rhoades?

8 A. It appears to be an aerial view of the
9 correctional facility.

10 Q. Let me now turn your attention --
11 actually, before I introduce the next exhibit, or
12 introduce an exhibit, did you take photographs in
13 this case, you or somebody with you?

14 A. Someone with me did.

15 Q. Can you tell us the process by which
16 photographs were taken?

17 A. The process is to take overview
18 photographs of the exterior part of a crime scene,
19 and work our way in to medium shots, and then
20 ultimately close-up or macro shots.

21 Q. And ideally, when you're processing a
22 scene, do you try to take a photograph of evidence
23 as you first find it before it's disturbed at all or
24 processed?

25 A. As we find it, yes.

1 Q. What's the purpose of doing that?

2 A. We want to show what the scene was when we
3 got there.

4 Q. And then as you process the scene and move
5 things around, do you then sometimes take additional
6 photographs?

7 A. Yes, we do.

8 Q. Who was the person taking pictures on this
9 occasion?

10 A. On this occasion it was, at the time, Chad
11 Casson, who was assigned to our crime scene unit.

12 Q. And as he took photographs, did you move
13 through the scene together and allow him to take
14 photographs while you were there processing the
15 scene?

16 A. Yes.

17 Q. Before trial, have you had a chance to
18 look at the photographs and can you tell the members
19 of the jury if the ones we're going to introduce are
20 a fair and accurate depiction of what you saw on or
21 about March 7, 2014?

22 A. Yes, I did and I can.

23 Q. I'm going to show you in a second here
24 Government's Exhibit 14, and actually with the
25 Court's permission I'll move the admission of

1 Government's Exhibit 14.

2 THE COURT: Any objection from the
3 defendants?

4 MR. VILLA: No objection.

5 MS. BHALLA: No objection.

6 THE COURT: Not hearing any objection --
7 Mr. Jewkes?

8 MR. JEWKES: No objection.

9 THE COURT: Government Exhibit 14 will be
10 admitted into evidence.

11 (Government Exhibit 14 admitted.)

12 MR. CASTELLANO: Thank you, Your Honor.

13 BY MR. CASTELLANO:

14 Q. Looking at Government's Exhibit 14, is
15 that basically a diagram of the aerial view we just
16 saw on Government's Exhibit 13?

17 A. It appears to be, yes.

18 Q. On Government's Exhibit 14 I'm going to
19 put a circle around the lower left-hand corner of
20 the scene. There are two buildings labeled 1-A and
21 1-B. Do you recall if you responded to that area of
22 the prison?

23 A. Yes, I did.

24 Q. And you mentioned, for example -- I'm
25 going to circle building 1-A -- you mentioned there

1 was a building with three pods contained inside. Is
2 that what you were discussing?

3 A. Yes.

4 Q. So this building here, 1-A, has three pods
5 contained within?

6 A. Yes, it does.

7 Q. And when you processed the scene, did you
8 process only one pod, or did you process multiple
9 pods?

10 A. Only one pod in this case is where the
11 evidence was located at.

12 Q. And so you kind of answered that question
13 but why did you only process one pod at that time?

14 A. To my understanding at the time, nothing
15 occurred in any of the other two pods or any of the
16 other units.

17 Q. So at that time, did you have any
18 indication that there is any involvement from anyone
19 or anything in the other two pods within that
20 building?

21 A. No.

22 Q. Let me turn your attention now to
23 Government's Exhibit 16.

24 MR. CASTELLANO: And I move the admission
25 of Government's Exhibit 16, Your Honor.

1 THE COURT: Any objection from the
2 defendants?

3 Not hearing any objection from the
4 defendants, Government's Exhibit 16 will be admitted
5 into evidence.

6 (Government Exhibit 16 admitted.)

7 BY MR. CASTELLANO:

8 Q. Looking at Exhibit 16, what can you tell
9 us about that door?

10 A. This is the photo image of the exterior
11 side of the entrance into unit 1-A.

12 Q. And what do you see once you enter that
13 first door labeled "1-A"?

14 A. From here when you step through that door,
15 you enter an alternate area that has three doors
16 that go into the other three pods. And then right
17 directly above you is the office area where the
18 observation correctional officer is stationed.

19 Q. I'm going to show you what's already been
20 admitted as Government's Exhibit 15. Now, you
21 mentioned you moved through the 1-A door and you
22 have three other doors, one for each pod; is that
23 correct?

24 A. Yes.

25 Q. And in this exhibit what are we looking

1 at?

2 A. This will be a photo image of the exterior
3 side of the B pod.

4 Q. And during your time there, did you also
5 learn that B pod was known as the blue pod?

6 A. Yes.

7 Q. And did this become basically your crime
8 scene?

9 A. Yes.

10 MR. CASTELLANO: At this time, Your Honor,
11 just to move things along a little bit I'm going to
12 move en masse groups of photos starting with
13 Government's Exhibit 17 to Government's Exhibit 24.

14 THE COURT: 17 through 24?

15 MR. CASTELLANO: Yes, sir.

16 THE COURT: Any objections to those from
17 the defendants?

18 MR. VILLA: No, Your Honor.

19 MR. MAYNARD: No, Your Honor.

20 MR. JEWKES: No, Your Honor.

21 THE COURT: Not hearing any, Government's
22 Exhibits 17 through 24, inclusive without gaps, will
23 be admitted into evidence.

24 (Government Exhibits 17 through 24
25 admitted.)

1 BY MR. CASTELLANO:

2 Q. Agent Rhoades, I next want to turn your
3 attention to Government's Exhibit 17. What are we
4 looking at there?

5 A. This is standing outside in the entry room
6 and looking to the doorway of the B pod.

7 Q. So this is what you first saw when you
8 opened that B pod door?

9 A. Yes, it is.

10 Q. In the lower left-hand corner, it looks
11 like there is something on the ground and on the
12 wall. Do you know what that is or what it was later
13 revealed to be?

14 A. Blood.

15 Q. Also on that exhibit you see some stairs
16 straight ahead. Tell us about the layout of the
17 pod.

18 A. The pod has two levels, an upper and lower
19 level, and walkways that lead into -- I believe
20 there's eight cells on the upper level and eight
21 cells on the lower level. So what this image is
22 showing is the steps going up to the upper level.

23 Q. Next is Exhibit 18. What are we looking
24 at there?

25 A. This is an image through the entrance of

1 the pod and the camera is panned a little bit to the
2 right of those steps, again just showing an
3 overview.

4 Q. From the photograph, it looks like it's
5 dark inside the pod. Is that just lighting? Or
6 what can you tell us about that?

7 A. I think that was from the flash not
8 getting in through the doorway and illuminating a
9 lot of the interior.

10 Q. About what time were you called out to the
11 prison?

12 A. I was called -- notified at around 6:00
13 p.m. And I believe I got out there around 8:00,
14 8:00 p.m.

15 Q. In March, do you recall if it was getting
16 dark at that time?

17 A. No, I don't.

18 Q. And if you recall, approximately what time
19 did you start actually processing the pod as a
20 scene?

21 A. I believe it was around 8:00. Let's see.
22 Let me think here. 8:00 or 9:00. There was a
23 briefing before I actually got into the pod.

24 Q. What's the need for the briefing once you
25 arrived?

1 A. Helps us to kind of get an overview of
2 what type of evidence and a little bit of primarily
3 of what was learned of the investigation. So it
4 kind of helps us to have an understanding of what
5 we're going to be confronted with in a crime scene.

6 Q. At the point that you entered the pod,
7 were there any inmates in there?

8 A. No.

9 Q. Do you know whether they were moved
10 somewhere else?

11 A. Yes, they were.

12 Q. Let's take a look at number 19 next. And
13 what is that?

14 A. This is a photo image of the -- again,
15 standing out into the entryway photographing inside
16 the B pod, and again, panned over slightly to the
17 right.

18 Q. Let's look at Government's Exhibit 20,
19 please. Okay. Same question. What is this a
20 photograph of?

21 A. This is a photograph now taken from inside
22 the pod, and it's an overview of the steps and it
23 shows part of the upper-level areas, upper and lower
24 areas. Sorry.

25 Q. I'm circling in Exhibit 20 what appears to

1 be a trash can of some sort. First of all, is this
2 a trash can?

3 A. Yes, it is.

4 Q. Did that later become relevant to your
5 investigation?

6 A. Yes, it did.

7 Q. Okay. Next is Exhibit 21. Is that just a
8 larger picture of the pod itself?

9 A. Yes, it is.

10 Q. And once again, are you just trying to get
11 a layout of the pod before you actually start to
12 look closer for evidence of crime?

13 A. That's correct. Overview photos.

14 Q. Exhibit 22, same question.

15 A. This is an overview of the pod, again
16 panning around to the right; shows the steps and the
17 upper and lower level.

18 Q. Let's look next at Exhibit 23.

19 A. And this is also an overview of the pod,
20 panning slightly to the right, again showing both
21 levels.

22 Q. And Exhibit 24?

23 A. This is going to be panning a little bit
24 to the right from the last photo image and this is
25 going to show a microwave. There is a TV screen and

1 looks like books, telephone, some other -- this is
2 part of the day area, I think they called it.

3 Q. Okay. This time I'm going to look at the
4 next group of pictures, Government's Exhibits 25
5 through 37.

6 MR. CASTELLANO: And at this time the
7 Government moves the admission of Government's
8 Exhibit's 25 through 37.

9 THE COURT: Any objection from the
10 defendants?

11 MS. DUNCAN: No, Your Honor.

12 THE COURT: Not hearing any objection,
13 Government's Exhibits 25 through 37 inclusive
14 without gaps will be admitted into evidence.

15 (Government Exhibits 25 through 37
16 admitted.)

17 BY MR. CASTELLANO:

18 Q. Agent Rhoades, I'm going to show you
19 Exhibit 25. What's the idea behind this photograph?

20 A. This is going to be an overview, and again
21 panned a little bit to the right from the last
22 image. It's showing the telephone, and that door is
23 a storage closet for -- I think they had, like, mops
24 and stuff like that in there.

25 Q. I'm circling an object at the top of this

1 exhibit. Do you know what that is?

2 A. Yes, I do.

3 Q. What is it?

4 A. That's a surveillance or video camera.

5 Q. Was it your understanding that there was
6 at some point video produced from one or more of
7 these cameras?

8 A. Yes, I do.

9 Q. And do you recall how many different views
10 you get from the camera or camera angles?

11 A. No, I don't.

12 Q. Next is Exhibit Number 26. What is that?

13 A. This is going to be an overview of the
14 inside of the entrance into the B pod. It's kind
15 of -- it's a side view of it.

16 Q. Government's Exhibit 26. If you go
17 through that door and turn to the left, are you
18 exiting the pod?

19 A. Yes, you are.

20 Q. I'm again circling something on the floor
21 in Government's Exhibit 26. What is that?

22 A. That's blood.

23 Q. Turning next to Exhibit 27, what are we
24 looking at there?

25 A. This is an overview of the lower-level

1 cell doors. You can see the steps, so these would
2 be kind of under the steps.

3 Q. And Exhibit 28. In this exhibit here, it
4 appears that there are some tables here in the open
5 area. Is this the scene, once again, as you found
6 it when you entered the pod?

7 A. Yes, it is.

8 Q. I'm circling some items on the table. If
9 you recall, do you remember what these two items are
10 on this middle table in that exhibit?

11 A. I believe they were playing cards.

12 Q. And from your processing of the scene, did
13 those appear to have any significance?

14 A. No.

15 Q. Next is Exhibit 28.

16 A. This is an overview of the day area as
17 well as the lower cells.

18 Q. And next is Exhibit 30.

19 A. This is the entrance to cell 105.

20 Q. Do you know whose cell that was?

21 A. I believe it was assigned to Javier
22 Molina.

23 Q. As you were processing the scene, would
24 you try to take a picture of the outside of the cell
25 so that the rest of the pictures that followed,

1 you'd know it was pictures from the inside of the
2 cell?

3 A. Yes.

4 Q. Was that the idea?

5 A. Yes.

6 Q. Okay. Let me hand you next Exhibit 31.

7 In this exhibit there appears to be an L-shaped
8 ruler. What would you call that?

9 A. They call it an L scale. ABFO I think is
10 the proper name for it. And it's in units of
11 measurements from millimeters and centimeters.

12 Q. What's the purpose of using something like
13 this in processing a scene?

14 A. We want to use this type of a scale and
15 take a photo image perpendicular so that any size or
16 dimensions can be accurately studied or reproduced,
17 mostly for lab analysis or some type of analytical
18 work.

19 Q. Was there anything you were trying to
20 capture in Exhibit 31 that you recall?

21 A. Just noticed some scratch marks and
22 disturbances on the floor.

23 Q. And at this point in the investigation,
24 what significance might that have had to you?

25 A. At that time we weren't really sure. It

1 could have been from a struggle or some type of
2 movement.

3 Q. Turning to Exhibit 32, same question.
4 What are you trying to look for in an exhibit like
5 this?

6 A. This is similar to the previous
7 photograph. It shows disturbance and scratch marks,
8 some gouges, it looks like, in the floor.

9 Q. I'm going to circle something toward the
10 top center of the screen. It looks like possibly a
11 horizontal line of some sort. Are those the types
12 of things you're looking for?

13 A. Yes.

14 Q. What might that mean to you?

15 A. Well, again, just some type of a movement
16 scraping across the surface of the floor. In this
17 picture we also have what could be a hair or a
18 fiber.

19 Q. On your screen, could you go ahead and
20 touch the area you're talking about? Is it within
21 that same circle?

22 A. Yes, it is.

23 Q. And what significance might that have for
24 investigation?

25 A. Again, it's just documenting not just this

1 one area, but the area within the view of that
2 scale. Scratching or movement in that area of the
3 floor.

4 Q. Next is Exhibit 33. Does Exhibit 33
5 capture anything in addition to what you've already
6 discussed with us?

7 A. I'm not seeing anything different.

8 Q. Exhibit 34?

9 A. Exhibit 34, on the top, you can begin to
10 see maybe some indication of footwear impression.

11 Q. If you can, can you please circle that?

12 A. (Witness complies.)

13 Q. And what significance would that have to
14 you in processing the scene?

15 A. It would be documentation of footwear
16 impression for any type of a footwear pattern
17 analysis that the lab may be able to conduct with a
18 submitted standard, of course.

19 Q. So if you have an occasion, there might be
20 basically a footprint in there. Would it help you
21 to collect other inmates' shoes to compare to
22 something like a pattern like this?

23 A. Yes, it would.

24 MR. CASTELLANO: For the record, the
25 witness has circled the top center of the screen.

1 THE COURT: The record will so reflect.

2 BY MR. CASTELLANO:

3 Q. Exhibit 35. Same question. Anything else
4 of significance that you see here?

5 A. Not that I'm seeing, no.

6 Q. Next is Exhibit 36. What is it that you
7 notice about this photograph?

8 A. In this photograph we're documenting gouge
9 marks in the floor. They seem deeper. And it looks
10 like a couple of gouge or chip marks.

11 Q. What might that mean to you?

12 A. Well, something heavy, or with a lot of
13 force or energy struck that surface to chip that out
14 or to gouge whatever that concrete surface or
15 whatever it's made out of occurred.

16 Q. Next is Exhibit 37. What do you see in
17 this photograph?

18 A. This photo image shows more of the scratch
19 marks but in the upper portion of the photo it shows
20 blood drips.

21 Q. I'm going to circle two darker spots
22 toward the top of this image. Are those what you're
23 talking about when you say "blood drips"?

24 A. Yes.

25 Q. Was it your belief at that time that that

1 was blood?

2 A. Yes.

3 MR. CASTELLANO: The next set of exhibits
4 are Government's 38 through 51. Your Honor, the
5 United States moves the admission of Government's
6 Exhibits 38 through 51.

7 THE COURT: Any objection from the
8 defendants?

9 MR. VILLA: No, Your Honor.

10 MR. JEWKES: No, Your Honor.

11 THE COURT: Not hearing any objection,
12 Government's Exhibit's 38 through 51 inclusive
13 without gaps are admitted into evidence.

14 (Government Exhibits 38 through 51
15 admitted.)

16 BY MR. CASTELLANO:

17 Q. Just so it's clear, since we haven't seen
18 a picture of another door, is it your understanding
19 these are photographs inside of Javier Molina's
20 cell?

21 A. Yes.

22 Q. Let's turn next to Government's Exhibit
23 38. Now, on this image it looks like the L-shaped
24 ruler is still on the floor. Can you tell us
25 whether or not that's the same area that we looked

1 at in the previous photographs with at least a
2 couple of spots of blood?

3 A. Yes, it is.

4 Q. Now, I'm circling the L on that screen,
5 and within that circle do you see a number of drops
6 of something?

7 A. Yes, I do.

8 Q. What is that?

9 A. They're going to be drops of blood.

10 Q. The same question as before: When you
11 take this photograph -- or Agent Casson, who is with
12 you -- do you try to capture the scene as it was
13 when you entered the cell?

14 A. That's correct.

15 Q. Next is Exhibit 39. Same question.
16 Within this L, are we now looking at multiple drops
17 of what appear to be blood?

18 A. Yes.

19 Q. And the same question as before. Does
20 this ruler now help you measure the size of the
21 drops of blood, if necessary?

22 A. Yes, it does, as well as the distance
23 between each drop.

24 Q. Next is Exhibit 40. What are we looking
25 at in this exhibit?

1 A. This is going to be an overview. The
2 green bag and those items are on top of the clothes
3 hamper.

4 Q. Anything else of significance, or is this
5 just to show what's in that room?

6 A. Yes, it's just an overview of how the room
7 was when we walked in.

8 Q. Take a look at Exhibit 41. Anything else
9 you see there?

10 A. It's just showing, of course, the scale
11 with the drips of blood, and the work -- or bench or
12 desk.

13 Q. Okay. Now let's turn to Exhibit 42. If
14 you can tell from that picture, what are we looking
15 at?

16 A. We're looking at a cast-off bloodstain.

17 Q. What is a cast-off bloodstain?

18 A. That's going to be a bloodstain put into
19 free flight, and then it comes into contact with the
20 surface, usually, then it becomes an elliptical
21 shape.

22 Q. From your training and experience, do you
23 know how drops like that are created?

24 A. By being flung off of a bloody object.

25 Q. In other words, if there is something on

1 the object and the object is moved, does it then, as
2 you stated, fling something in the air?

3 A. Yes, if you have a bloody object, you
4 swing back and you stop. The blood then will
5 continue off of that object, creating a cast-off
6 pattern.

7 Q. From this particular picture, can you tell
8 where this is in the cell?

9 A. This is going to be on a vertical part of
10 the wall, right near that bench that was in the
11 previous image.

12 Q. Let's take a look at 43. That may help
13 out a little bit. Okay. Now, do we have an idea --
14 in this picture, it looks like there is a corner.
15 I'm highlighting a corner here. Is this the corner
16 of a wall and the ground underneath?

17 A. Yes, it is.

18 Q. And in Exhibit 43 is this the same
19 cast-off pattern you previously talked about?

20 A. Yes, it is.

21 Q. Looking at Exhibit 44, is this the same
22 blood or different blood in a different part of the
23 cell?

24 A. It's a different bloodstain in a different
25 part of the cell.

1 Q. And next is Exhibit 45. Looks like in
2 this photograph toward the center there is
3 another -- I'll call it just the L ruler. What are
4 you measuring there or what are you trying to show?

5 A. It's hard to tell in this. This is an
6 overview inside and an orientation to the location
7 of that scale. In this image it's hard to tell.
8 I'm seeing what appear to be gouge marks on the
9 floor.

10 Q. Let's take a look at Exhibit 46. Now, on
11 46, does this appear to be what you were trying to
12 measure in 45 or using that for reference?

13 A. Actually, when you get down toward the L
14 part of the scale, you can see a bloodstain on the
15 floor.

16 Q. Can you circle that for us, please? You
17 made a circle towards where the L is, where the
18 perpendicular lines are in the L; is that correct?

19 A. Yes.

20 Q. Did you also believe that to be blood?

21 A. Yes.

22 Q. Next is Exhibit 47. What are we looking
23 at in this exhibit?

24 A. This is an image when you walk into the
25 pod, you can see the bottom parts of the steps, and

1 you can see toward the left side would be the
2 entrance to the pod.

3 Q. So for reference, if you went towards this
4 and turned left, you could walk out of the pod?

5 A. Yes.

6 Q. Actually, I'll show you the next picture.
7 Do you see there is an L here? Let me go back one
8 more to 47. I'm circling the L on the floor. Once
9 you take that picture, do you then try to take a
10 closer picture so we know where this was taken
11 within a room?

12 A. Yes, we do.

13 Q. I'm also circling towards the left three,
14 I'll call them, smudges: Two on the wall and one on
15 the floor. Do you recall what those were?

16 A. Yes, I do. Blood.

17 Q. Based on your investigation, whose blood
18 did you believe that to be?

19 A. Mr. Molina's blood.

20 Q. Turning now to Exhibit 48, is this a
21 closer picture of what we saw in 47 with the L on
22 the ground?

23 A. Yes, it is.

24 Q. And the same question. What are you
25 trying to capture here?

1 A. We are photographing those drips of blood.

2 Q. For the record, I'm circling what appear
3 to be circles in this exhibit. Are those what you
4 believe to be drops of blood?

5 A. Yes.

6 Q. Okay. Turning to Exhibit 49, is this what
7 you mentioned in the other photograph is blood on
8 the floor and the wall?

9 A. Yes.

10 Q. Next is Exhibit 50. In the previous
11 picture you had the L on the ground. Is this the
12 same L now measuring a blood smear?

13 A. Yes, it is.

14 Q. What term would you use for that type of
15 blood pattern, if there is a term?

16 A. Actually there are several events within
17 there. One bloodstain. You have a pooling of
18 blood. You have what appears to be a drip into drip
19 of blood that's causing a pool. And then you have a
20 smear, and you have what appears to be capillary
21 action, which is an object placed in blood, then
22 pulled away from it, so you have a distinct pattern
23 created after that's done.

24 Q. Next is Exhibit 51. What have you done in
25 this picture?

1 A. We placed the L scale on the vertical
2 portion of the wall, bracketing that blood area.

3 Q. And what, if any, significance does that
4 type of pattern have to you?

5 A. It just shows that there was a bloody
6 object placed against that surface and in some type
7 of a lateral motion.

8 MR. CASTELLANO: The next set of exhibits
9 will be Government's Exhibits 52 through 64, and at
10 this time the Government moves the admission of
11 Government's 52 through 64.

12 THE COURT: Any objection from the
13 defendants?

14 MR. VILLA: No, Your Honor.

15 MR. MAYNARD: No, Your Honor.

16 THE COURT: Not hearing any objection from
17 the defendants, Government's Exhibits 52 through 64
18 inclusive and without gaps will be admitted into
19 evidence.

20 (Government Exhibits 52 through 64
21 admitted.)

22 BY MR. CASTELLANO:

23 Q. Let's look next at Exhibit 52. Can you
24 tell us what we're looking at in this exhibit?

25 A. That's going to be an image of a smear of

1 blood on the inside of the pod entrance door.

2 Q. So if we go through this door, are we
3 exiting the pod?

4 A. Entering the pod. Then you'd see it on
5 the interior side of the door.

6 Q. Just so I'm clear, this picture is of the
7 door on the inside of the pod?

8 A. Yes.

9 Q. And what's the purpose of measuring here,
10 and were you trying to capture anything else in this
11 exhibit?

12 A. No. We were trying to capture that
13 bloodstain with the scale.

14 Q. Next is Exhibit 53. Is Exhibit 53 close
15 to Exhibit 52 on that door?

16 A. Yes, it is.

17 Q. And what, if any, significance do these
18 markings have on the door?

19 A. The upper one appears to be a partial,
20 maybe some type of a latent print, I don't know,
21 from the finger, maybe from the palm side, given its
22 linear shape.

23 Q. If it looks like something that might be a
24 fingerprint, why would that be important to you?

25 A. For any type of comparison.

1 Q. Next is Exhibit 54. What are we looking
2 at?

3 A. This is an overview image depicting the
4 trash can next to the steps.

5 Q. Why did the trash can become important to
6 you?

7 A. We had found and collected some evidence
8 from inside of it.

9 Q. Let's then turn to Exhibit 55. What is
10 this?

11 A. This is a photo image looking straight
12 down into the trash container.

13 Q. Now, with Exhibit 55, can you tell the
14 members of the jury whether this is as you found it,
15 or had this been disturbed at any point where it was
16 found?

17 A. At this point it had been disturbed as
18 this photograph was taken.

19 Q. Okay. Can you explain that, please?

20 A. We did our overviews and documented the
21 visible evidence and then the -- I forget the name
22 of their unit from the Corrections -- helped us to
23 search for evidence at that point. This is evidence
24 we don't know exists yet; and with the understanding
25 that as they find it to then stop and let us know so

1 we can document it. But at that point in searching,
2 items are moved from on top of it or whatever the
3 case might be.

4 Q. So when this photograph was taken, was it
5 your understanding that something may have been
6 found underneath this and the picture was taken to
7 try to show what it looked like before anything was
8 removed?

9 A. That's correct.

10 Q. Let's look at Exhibit 56. Anything of
11 significance you see at this point in the
12 photography, number of pictures that were taken?

13 A. This is looking down. You can see part of
14 a handle of a sharp-edged instrument.

15 Q. Can you circle that for us, please?

16 A. I believe it's going to be in this area.

17 Q. Let's go ahead and turn then to Exhibit
18 57. Now, Exhibit 57 has a marker with a Number 1 on
19 it. What is the purpose of that marker?

20 A. These markers are used to identify
21 specific items of evidence we collect. This Number
22 1 identified a chip bag that we collected as
23 evidence Number 1.

24 Q. At that point in time, did the chip bag
25 seem to have some importance to you?

1 A. Yes, it did.

2 Q. What did you think was the significance at
3 that point in time?

4 A. It appeared -- the way it was placed on
5 top of that sharp-edged instrument, it appeared to
6 be placed there for concealment purposes. So it was
7 photographed and collected for the possibility of
8 latent prints or even DNA evidence on it.

9 Q. Look at Exhibit 58. What do we now see in
10 this exhibit?

11 A. Now, you can clearly see the handle of a
12 sharp-edged instrument, so --

13 Q. I'm going to circle something that's in
14 what I would call the lower left corner of the trash
15 can in that exhibit. Have I circled what you
16 believe to be the sharp instrument?

17 A. Yes.

18 Q. And what can you tell us about that? It
19 looks like there is some string?

20 A. There was string on one end of it.
21 Opposite, the sharp point was wrapped in plastic,
22 possibly, if I remember correctly, cardboard, pieces
23 of cardboard.

24 Q. Now, looking at Exhibit 59, is that a
25 better view of the sharp instrument that was in the

1 previous exhibit?

2 A. Yes.

3 Q. And at this point it looks like it's been
4 moved; is that correct?

5 A. Yes, it has been.

6 Q. Is that so you could get a better
7 photograph of it in its entirety?

8 A. Yes, and the area that it was collected
9 from.

10 Q. And you mentioned a sharp point. I'm
11 circling at the end of that black instrument the
12 tip. How would you describe the tip of that object?

13 A. It seems to be worked down to a point; by
14 whatever means, I don't know.

15 Q. And what did the object appear to be, in
16 terms of plastic or metal? What can you tell us
17 about that?

18 A. It appeared to be some type of a metal,
19 and that could be a hard aluminum or some type of a
20 metal like that.

21 Q. Next is Exhibit 60. There is a Number 2
22 in this exhibit, what is the Number 2 for?

23 A. It's identifying this sharp-edged
24 instrument as evidence item Number 2.

25 Q. So if you write a report, does this help

1 you remember and memorialize where items were taken
2 as pieces of evidence?

3 A. Yes, and this number will follow that item
4 if it goes to the lab and different places, so that
5 helps us track that specific item of evidence.

6 Q. In terms of the numbering, then, as you
7 indicated, is it important that the Number 2 remain
8 Number 2 throughout so you can keep track of what
9 this piece of evidence is?

10 A. Yes.

11 Q. Let's look at Exhibit 61. What is that?

12 A. This is a photograph of the sharp-edged
13 instrument collected as Number 2, and it's placed
14 inside of a knife box, which will be packaged with
15 evidence tape.

16 Q. What's the purpose of the ruler in this
17 picture?

18 A. This will show the length of that
19 sharp-edged instrument.

20 Q. Would it be fair to say this instrument is
21 approximately 9 and a half inches?

22 A. Yes.

23 Q. Looking at Exhibit 62, what is this?

24 A. This is a close-up photograph of the
25 handle portion of the sharp-edged instrument.

1 Q. Can you tell the members of the jury
2 whether this string in the photograph is somehow
3 attached to the sharp instrument?

4 A. It appears to be taped on or wrapped in
5 with the plastic.

6 Q. Now, are you familiar with other names?
7 We've been calling it a sharp instrument. Are you
8 familiar with other names that this is called?

9 A. We refer to it as slang as a shank.

10 Q. Exhibit 63. What's the purpose of this
11 exhibit?

12 A. This is going to be a close-up of the
13 handle of the sharp-edged instrument marked as
14 Number 2 evidence, and it's showing a scale. You
15 can see -- well, there's present some reddish stain
16 on there that appeared to be blood, so we're marking
17 that with a scale.

18 Q. If you can, please circle the stain that
19 you're referring to.

20 A. (Witness complies.) I think this was in
21 these two areas here.

22 Q. So you've made a circle between the one
23 and two-and-a-half centimeter mark and another one
24 between the three-and-a half and 5-centimeter mark
25 on that ruler; is that about right?

1 A. Yes.

2 Q. Okay. Exhibit 64. Same question. What
3 are you measuring or looking at here?

4 A. This image will be the same as the
5 previous one. Again, marking what we believe to be
6 blood on the handle of that evidence item Number 2.

7 MR. CASTELLANO: The next exhibits begin
8 with 65 through 73. At this time the Government
9 moves the admission of 65 through 73, Your Honor.

10 THE COURT: Any objection from the
11 defendants?

12 MS. DUNCAN: No, Your Honor.

13 THE COURT: Not hearing any objection,
14 Government's Exhibits 65 through 73 inclusive
15 without gaps are admitted into evidence.

16 (Government Exhibits 65 through 73
17 admitted.)

18 BY MR. CASTELLANO:

19 Q. Agent Rhoades, let's take a look at
20 Exhibit 65. What are we looking at?

21 A. This is going to be an overview image of a
22 shower. I think the upper level, if I remember
23 correctly.

24 Q. Do you remember if this pod had an
25 upper-level shower and a lower-level shower?

1 A. I believe it did, if I remember correctly.

2 Q. Is it your recollection that this is the
3 upper-level shower?

4 A. Yes, and -- I think it was.

5 Q. Some other pictures may refresh your
6 recollection here in a second, so I'll move forward.
7 Before I do that there are some things. I'm making
8 a circle on the bottom of the shower. And can you
9 see a drain hole there?

10 A. Yes.

11 Q. What are the other items that are
12 referenced in this picture?

13 A. You can see some pieces of plastic, pieces
14 of cardboard laying around the drain.

15 Q. Let's look at Exhibit 66. Is this now a
16 closer view of the previous exhibit?

17 A. Yes, it is.

18 Q. What are you trying to capture here?

19 A. Again, the overall image to include the
20 plastic and the cardboard. You can also see around
21 some of the plastic is a ligature of some type
22 similar to what was on the evidence item Number 2,
23 the sharp-edged instrument from the trash container.

24 Q. I'm going to circle an item in the lower
25 right-hand corner. You mentioned the term

1 "ligature." What does that refer to?

2 A. A string or a shoestring, a cord of some
3 type. Just kind of a generic term.

4 Q. And just comparing that string versus the
5 shank that was found in the trash can, did they
6 appear to be similar in nature?

7 A. Appeared to be, yes.

8 Q. Exhibit 67. This is just now a closer
9 view of Exhibit 66?

10 A. Yes, and then if you look inside one of
11 the holes in the drain, at the lower left you can
12 see a piece of an object showing through there.

13 Q. Let's see if we can see it better in
14 Exhibit 68. Is that a better view?

15 A. Yes, it is.

16 Q. If you can circle the object you were
17 referring to.

18 A. (Witness complies.)

19 Q. If this were a clock, I'll call it the
20 circle that is about 7:00 o'clock on the clock face.
21 What's inside of that circle that you drew?

22 A. Once we're able to retrieve it, it turned
23 out to be another sharp-edged instrument.

24 Q. And when you say that, do you mean -- are
25 you referring to a shank?

1 A. Yes, a shank.

2 Q. Now, you said once you were able to
3 retrieve it. How easy or difficult was it to get
4 that out of there?

5 A. We actually had to go down through the
6 back side of the pod into a working area or crawl --
7 walk space, if you will, where the drainage -- I
8 think they have traps to catch evidence and stuff.
9 So that was dismantled, and this was collected from
10 the back side of the drain, actually.

11 Q. Looking at Exhibit 69, there is now a
12 marker with a Number 3 on it. Is that -- did you
13 mark that for the same reason? You collected
14 evidence, you identified where it came from?

15 A. Yes.

16 Q. And Exhibit 70. Is that a closer view of
17 the items which would be labeled Exhibit 3 for your
18 purposes?

19 A. Yes. The shank was collected from here,
20 was collected as evidence item 3. The plastic, the
21 cardboard inside the shower that you're looking at,
22 was collected as evidence item Number 3A.

23 Q. Turning to Exhibit 71, what are we looking
24 at in this exhibit?

25 A. This is the back side of that shower.

1 That pipe was disconnected and then that shank was
2 retrieved from inside that pipe.

3 Q. And is that the one that we saw in the
4 shower?

5 A. Yes, it is.

6 Q. Turning to Exhibit 72, what is that?

7 A. That will be the shank in the shower.

8 Q. Exhibit 73?

9 A. This was a rope that we identified and
10 collected from cell number 105.

11 Q. And why would you have collected something
12 like that from the cell?

13 A. We had noticed what appeared to be blood
14 saturated inside or within the rope fibers.

15 Q. I'm circling near the Number 3 on the
16 ruler you have on here at the marker 4, there is
17 something on that rope. What is that?

18 A. That's going to be what appeared to be
19 blood soaked into the fibers of that rope.

20 Q. Now, did you later learn that was or
21 wasn't blood, or is that what you suspected at the
22 time?

23 A. That's what we expected at the time.

24 Q. Had you been to this facility before?

25 A. Yes, I have.

1 Q. For what purpose?

2 A. Similar investigations.

3 Q. And have you been out there before for a
4 homicide?

5 A. Yes.

6 Q. And in the previous homicide, can you tell
7 the members of the jury whether a rope or a ligature
8 was used?

9 A. Yes. I've been on some that ligature was
10 used for strangulation.

11 MR. CASTELLANO: Turning to the next set
12 of exhibits, Exhibits 74 through Exhibit 83 are the
13 next batch. And at this time, Your Honor, I'd move
14 the admission of 74 through 83.

15 THE COURT: Any objections from the
16 defendant?

17 MR. VILLA: No, Your Honor.

18 MS. DUNCAN: No, Your Honor.

19 THE COURT: All right. Government's
20 Exhibits 74 through 83 will be admitted into
21 evidence.

22 (Government Exhibits 74 through 83
23 admitted.)

24 BY MR. CASTELLANO:

25 Q. Turning to Exhibit 74, Agent Rhoades, what

1 are we looking at?

2 A. This is a pair of sweat pants that were
3 soaking in some water inside that sink. This is
4 cell number 111.

5 Q. If you recall, do you recall whose cell
6 was number 111?

7 A. No, I don't recall.

8 Q. What was the significance of this pair of
9 pants?

10 A. This pair of pants had what appeared to be
11 blood saturated into the fabric.

12 Q. And since you have the Number 5 there, did
13 you collect that as evidence?

14 A. Yes.

15 Q. Turning to Exhibit 75, is this what you
16 stated as cell 111 where the pants were collected?

17 A. Yes.

18 Q. Exhibit 76. What are we looking at in
19 this exhibit?

20 A. This commode inside of cell 111 had strips
21 of plastic floating inside the water.

22 Q. And since we have the marker 6 on this
23 exhibit, what is it that you collected here?

24 A. That strip of plastic.

25 Q. Why was that significant to you at that

1 time?

2 A. It seemed consistent with the type of
3 plastic that the shanks' handle were wrapped in.

4 Q. Turning now to Exhibit 77, why have we now
5 gone back to this exhibit, if you remember -- or to
6 the trash can, I should say?

7 A. This will be the trash can from before
8 next to the steps. From further searching from the
9 correctional officers, they located another shank
10 deep further down inside of this trash container.

11 Q. I'm going to circle something that's at
12 the tip of a plastic bottle in this exhibit. What
13 have I circled there?

14 A. That's going to be one of the ends of a
15 shank.

16 Q. And since the Number 7 is there, did you
17 collect that as Exhibit 7 for your purposes?

18 A. Yes.

19 Q. Now turning to Exhibit 78, do you remember
20 who this person is?

21 A. No, I don't.

22 Q. Do you remember why this person is dressed
23 this way?

24 A. After we had finished processing the pod,
25 then each of the inmates assigned to that pod were

1 brought into another office, one at a time, and they
2 were photographed and their clothing were collected.
3 To my understanding, this was the clothing each of
4 them were dressed in during the time of the stabbing
5 incident.

6 Q. Is that what they were asked to do, was
7 put on the clothing that they were wearing at the
8 time?

9 A. That or that remained in the...

10 Q. What's the purpose of showing the hands?

11 A. Just to show if there is any, or lack of
12 any, blood or injuries.

13 Q. Turning to Exhibit 79, do you remember who
14 this person was?

15 A. No, I don't.

16 Q. Do you remember if the picture was taken
17 because he was one of the people in that pod?

18 A. Yes, that's correct.

19 Q. And as best as you can tell, was he
20 supposed to be wearing what he was wearing at the
21 time of the Molina murder?

22 A. That's my understanding, yes.

23 Q. Exhibit 80. Was this taken for the same
24 purpose?

25 A. Yes.

1 Q. Do you remember who this person was?

2 A. No, I don't.

3 Q. Exhibit 81. Did you know who this person
4 was?

5 A. No, I don't.

6 Q. And just so it's clear, if you were there
7 to process the scene, was it your job to interview
8 anybody?

9 A. No.

10 Q. Or was it your job to identify anybody?

11 A. No.

12 Q. So at this point are you just identifying
13 by photographs and other ways what or who was there
14 on that occasion?

15 A. Yes. And the clothing taken from each of
16 these individuals was packaged and their name is
17 associated with it. So it's in my report, but I
18 couldn't tell you offhand who they are.

19 Q. Do you remember about what time these
20 photos were taken? What time of the day or night?

21 A. It was the early morning hours. I think
22 we actually finished around 4:30 a.m. May have
23 gotten started around 1:30, 2:00.

24 Q. So once this process started, you stay on
25 scene, then, to continue to document everything that

1 was found there?

2 A. Yes.

3 Q. Exhibit 82. Do you know anything about
4 this person other than what you documented here or
5 in your report?

6 A. No.

7 Q. Exhibit 83, same question.

8 A. No, I don't know.

9 MR. CASTELLANO: Okay. The next set is
10 Exhibits 84 through 88, and 93 through 101. The
11 Government at this time moves the admission of those
12 two sets of exhibits.

13 THE COURT: All right. Any objection from
14 the defendants?

15 MR. VILLA: No, Your Honor.

16 MS. DUNCAN: No, Your Honor.

17 THE COURT: All right. Government's
18 Exhibits 84 through 88 and 93 through 101 inclusive
19 without gaps will be admitted.

20 (Government Exhibits 84 through 88 and 93
21 through 101 admitted.)

22 BY MR. CASTELLANO:

23 Q. Agent Rhoades, let's take a look at
24 Exhibit 84. This is another picture of the
25 bloodstains in the doorway to the pod?

1 A. Yes, it is.

2 Q. Exhibit 85. What are we looking at there?

3 A. I believe this is going to be an image of
4 one of the bloodstains inside the doorway.

5 Q. Exhibit 86?

6 A. This is going to be an image of the shank
7 collected from the shower.

8 Q. 87. Now that we have the ruler there,
9 does that help us with the dimension of that shank?

10 A. Yes, it does.

11 Q. Exhibit 88. What is that there? I'm
12 circling an object that runs diagonally from the top
13 center to the right center of this exhibit.

14 A. You know, I haven't seen these photos. I
15 don't know. It looks like a long metal object.

16 Q. Let's take a look at Exhibit 93 next.
17 This is a photograph of what?

18 A. Looks like it's a photo of the lower
19 portion of the steps.

20 Q. So are these the steps in the pod if
21 you're walking from the top tier to the bottom tier?

22 A. It appears to be, yes.

23 Q. And Exhibit 94. I'm circling some objects
24 on the blue door. Are these maybe some of the
25 stains that you documented earlier?

1 A. Yes, this would be the interior of the pod
2 door.

3 Q. Exhibit 95?

4 A. This will be the entrance coming into the
5 pod, showing the blood.

6 Q. Exhibit 96?

7 A. It will be the same image as before except
8 taken from just outside the pod.

9 Q. Looking at Exhibit 97, can you tell us
10 what that is?

11 A. That's standing outside of that cell
12 looking into it.

13 Q. Do you recall what number cell this was or
14 which cell it was?

15 A. No, I don't, and I can't see it on the
16 door, if it's written there.

17 Q. And what, if any, significance does this
18 puddle of water have at the bottom of the picture?

19 A. I don't know.

20 Q. So at this point, if you don't know the
21 facts, are you just documenting in case it becomes
22 important later on?

23 A. Yes. We'll document, again, as we find
24 the scene.

25 Q. I'm showing you Exhibit 98.

1 A. This is going to -- you can see the lower
2 part of the steps at the top of the photo image, and
3 it's going to be documenting some of the bloodstains
4 on the floor.

5 Q. And Exhibit 99?

6 A. That's going to be an image of the shank
7 collected from the trash can.

8 Q. Exhibit 100?

9 A. That would be a photo image of the point
10 of the shank.

11 Q. And I'll show you the shank in a little
12 bit. But if you recall, was there anything that
13 caught your attention at the tip of this, the shank
14 in Exhibit 100? If you can't tell from the picture,
15 I'll show you the shank in a little bit.

16 A. Not to my recollection. I don't see
17 anything.

18 Q. Next is Exhibit 101?

19 A. That's a photo image of the shank.

20 Q. Now, you took some photographs of the pod.
21 I want to ask you if you recall, from being in the
22 pod, whether there were doors that connected blue
23 pod to the pod that was next door to it.

24 A. I believe there was a door on the upper
25 tier, if I remember correctly, that connected to the

1 next pod.

2 Q. If I could have the visualizer for a
3 second, please. Thank you.

4 I'm showing you what's been admitted as
5 Defendants' Exhibit E, as in echo, 17 and I'm
6 showing you also here cell 105 for reference. Now,
7 cell 105 you said was Javier Molina's cell?

8 A. Yes.

9 Q. Then you mentioned you believe there was a
10 door on the upper tier. Is this the door that you
11 were referring to?

12 A. Yes.

13 Q. When you were taking photos at the scene,
14 did that door have any significance to you?

15 A. Not at that time, no.

16 Q. Did you document anything about that door?

17 A. No.

18 Q. And at the point you were at the scene,
19 did you have anything that pointed you to the cell
20 next door when you were investigating on March 7
21 into the hours of March 8, 2014?

22 A. No.

23 Q. I'm going to turn your attention now to,
24 if I can see the numbers, Exhibit 125 through
25 Exhibit 136. Let start there.

1 MR. CASTELLANO: Your Honor, at this point
2 I move the admission of Government's Exhibits 125
3 through 136.

4 THE COURT: Any objection from the
5 defendants?

6 MS. DUNCAN: No, Your Honor.

7 MR. VILLA: No, Your Honor.

8 THE COURT: Not hearing any objection,
9 Government's Exhibits 125 through 136 inclusive
10 without gaps are admitted into evidence.

11 (Government Exhibits 125 through 136
12 admitted.)

13 BY MR. CASTELLANO:

14 Q. Agent Rhoades, beginning with Exhibit 125,
15 what can you tell us about what's shown in that
16 exhibit?

17 A. This is a pair of boxer shorts that had
18 been cut, and this is showing some saturated blood
19 up on the upper left.

20 Q. Do you know whose boxer shorts these were?

21 A. These were relinquished to me from Agent
22 Jonathan Butler. He was sent to the ER to collect
23 evidence from Mr. Molina.

24 Q. Why were photographs taken of this type of
25 material or these items?

1 A. We'll document any blood or types of
2 defects from clothing removed from decedents or
3 victims from these type of investigations.

4 Q. When you received the item, as you stated
5 a second ago, was it actually cut off?

6 A. At some point, yes.

7 Q. Turning to Exhibit 126, does it look like
8 where the ruler is measuring at the L -- does that
9 look like an elastic waistband?

10 A. Yes.

11 Q. So what's in Exhibit 126?

12 A. It's -- we're documenting the bloodstains
13 saturated into that clothing with a scale.

14 Q. And do you recall on which day you
15 documented this information?

16 A. I have it in my report. It would be,
17 like, maybe the following day, possibly.

18 Q. Is your recollection, without seeing your
19 report, this is still within maybe a day or so of
20 the Molina homicide?

21 A. Yes.

22 Q. Looking at Exhibit 127, same thing. Are
23 you now in this image documenting anything that
24 might contain blood or other significance?

25 A. Yes, we are, with the scale.

1 Q. Exhibit 128, same question. Are you just
2 documenting things at this point?

3 A. Yes, we're documenting what appears to be
4 blood saturated into the fabric of those shorts.

5 Q. Turning to Exhibit 129. Still documenting
6 any evidence of blood or other material?

7 A. Yes, and this image also shows the cut in
8 the shorts.

9 Q. So for the record, between the number 7
10 and 8 on the ruler, is this the cut you're referring
11 to?

12 A. Yes.

13 Q. All right. Turning to Exhibit 130, this
14 looks like a different type of material here. So
15 what are we looking at in this exhibit?

16 A. This is going to be now photographing a
17 suspected bloodstain saturated into a pair of sweat
18 pants. I think they may have been sweat shorts, cut
19 short.

20 Q. What was your understanding of who these
21 sweat pants belonged to?

22 A. From Javier Molina.

23 Q. Next is Exhibit 131-T. Are you once again
24 documenting any indications of blood or other
25 evidence on his clothing?

1 A. Yes, the suspected blood.

2 Q. Next is Exhibit 132. What are we looking
3 at here?

4 A. This is a T-shirt collected from Javier
5 Molina.

6 Q. I've just circled various areas on the
7 shirt. From the picture it looks like they're a
8 different color from the shirt. I just made three
9 circles on the right, bottom center, and left of
10 this item of clothing. What is that?

11 A. That's going to be what we believe to be
12 blood saturated into the fabric.

13 Q. Let's look at Exhibit 133. Same thing.
14 What do the different colors on this clothing tell
15 you?

16 A. Again, saturated blood. And we're also
17 now documenting defects in the shirt.

18 Q. What type of defects?

19 A. Like cuts. Some are near circular, some
20 are elongated within the fabric of the shirt.

21 Q. Okay. From this exhibit, can you -- are
22 you able to make a circle around anything that you
23 just referred to as any defects?

24 A. Yes.

25 Q. Go ahead and circle those, please, or at

1 least a few examples.

2 A. (Witness complies.)

3 Q. That's toward the bottom center and then
4 toward the left you've made some circles there. And
5 what is your understanding of what you circled?

6 A. My understanding?

7 Q. Yes. What is that?

8 A. My understanding is it's holes or defects
9 made from stabbing action.

10 Q. Looking at Exhibit 134, you have another
11 measuring L, I'll call it, or ruler. What are you
12 trying to capture there?

13 A. We're again documenting with the scale the
14 blood, but also defects in his shirt.

15 Q. Can you circle one of those defects for
16 us, please?

17 A. Above that is the Number 3 and to the left
18 of that is Number 2 on the ruler, kind of where they
19 intersect.

20 Q. Is that a hole in the shirt?

21 A. Yes.

22 Q. Turning to Exhibit 135, is this the same
23 thing? You're now measuring bloodstains and holes
24 in the shirt?

25 A. Yes.

1 Q. And 136. Do you see any other holes
2 depicted in this exhibit?

3 A. Yes, right near the L part of the scale.

4 Q. And then I'll circle an area right there.

5 A. Yes.

6 Q. Is that another hole in the shirt?

7 A. Yes.

8 MR. CASTELLANO: Okay. The next set of
9 exhibits is Exhibits 137 through 142. At this point
10 I move the admission of Government's Exhibits 137
11 through 142.

12 THE COURT: Any objection from the
13 defendants?

14 MR. VILLA: No objection.

15 MR. MAYNARD: No, Your Honor.

16 THE COURT: Not hearing any objection,
17 Government's Exhibits 137 through 142 will be
18 admitted into evidence.

19 (Government Exhibits 137 through 142
20 admitted.)

21 BY MR. CASTELLANO:

22 Q. Turning to Exhibit 137, what are we
23 looking at there?

24 A. This is a photo image from the T-shirt.
25 And it's a larger hole.

1 Q. There also appears to be a white ring on
2 the fabric. What is that and what's its purpose?

3 A. We use that to help highlight some of the
4 defects in the shirt, just to help show their
5 position.

6 Q. Let's look at Exhibit 138. Is this the
7 shirt now laid out on the table?

8 A. Yes, it is.

9 Q. Exhibit 139. Now, you're here documenting
10 other holes and also showing the ring on there
11 indicating another hole on this piece of fabric?

12 A. That's correct.

13 Q. Also Exhibit 140. In between the ones on
14 this exhibit, is there another hole?

15 A. Yes.

16 Q. Let's look at Exhibit 141. Now, it
17 appears in the lower right-hand corner of this
18 exhibit there is a Number 5. Do you recall where
19 you previously had a picture of some pants with a
20 Number 5 by it?

21 A. Yes, I do, in the sink in cell 111.

22 Q. What's the purpose of taking this exhibit?

23 A. This is an overview of those pair of pants
24 laid out so we could examine and photograph possible
25 bloodstains and other things on the pants.

1 Q. When you first found these pants, were
2 they dry or were they wet?

3 A. They were wet.

4 Q. And when you found them, could you tell if
5 there was anything else -- well, they were wet and
6 they were in a sink; is that correct?

7 A. Yes.

8 Q. What else do you remember seeing in that
9 sink?

10 A. There was water in the sink with kind of a
11 reddish tint to it.

12 Q. Looking at Exhibit 142, since there is the
13 Number 5 here, are these the same pants?

14 A. Yes, they were.

15 Q. Did you have to dry these pants out before
16 you did anything else with them?

17 A. Yes, they were dried I think overnight.

18 Q. Agent Rhoades, I want to now turn your
19 attention to some of the exhibits in this case. I
20 think you testified earlier, if you had a number, it
21 was something that you had either collected or
22 otherwise documented in a report; is that correct?

23 A. Yes.

24 MR. CASTELLANO: May I approach the
25 witness, Your Honor?

1 THE COURT: You may.

2 BY MR. CASTELLANO:

3 Q. Agent Rhoades, I want to show you what's
4 been marked as Government's Exhibit 1. Can you tell
5 us what that is?

6 A. This is going to be that bag of chips that
7 was on top of the first shank in the trash can next
8 to the steps.

9 Q. Was this the exhibit that also had a
10 Number 1 by it in the photograph?

11 A. Yes, it is.

12 Q. How do you know it's the same thing you
13 collected?

14 A. Well, it appears to be the same thing, and
15 packaged with it is a brown paper bag with my
16 evidence label on it.

17 Q. And when you first packaged it, did you
18 store that in the brown paper bag that's contained
19 within the plastic bag?

20 A. Yes. Not the plastic bag; but I collected
21 and packaged this in the brown paper bag.

22 Q. What was the purpose initially of storing
23 it in a paper bag as opposed to a plastic bag?

24 A. Evidence preservation. DNA. A plastic
25 bag will develop condensation, moisture that could

1 destroy DNA. So everything with DNA evidence is
2 packaged in paper so it can breathe, basically.

3 Q. And that plastic bag -- does it appear to
4 be in the same condition as when you collected it?

5 A. Pretty much, yes.

6 MR. CASTELLANO: Your Honor, I'd move the
7 admission of Government Exhibit 1.

8 THE COURT: Any objection from the
9 defendants?

10 MR. VILLA: No, Your Honor.

11 MS. DUNCAN: No, Your Honor.

12 THE COURT: Not hearing any objection,
13 Government Exhibit 1 will be admitted into evidence.

14 (Government Exhibit 1 admitted.)

15 MR. CASTELLANO: And as best as I can
16 right now, I'm going to publish these to the jury,
17 if that's okay, Your Honor, using the visualizer.

18 THE COURT: You may.

19 BY MR. CASTELLANO:

20 Q. Since this was collected, are you aware
21 that it had any significance in this case other than
22 possibly covering the contents of the trash can?

23 A. Not to my knowledge, no.

24 Q. Agent Rhoades, I don't know if you have
25 gloves. Do you need gloves? I'm going to hand you

1 some other exhibits. I'm going to show you
2 Government's Exhibits 9 and 10.

3 MR. CASTELLANO: May I approach the
4 witness, Your Honor?

5 THE COURT: You may.

6 BY MR. CASTELLANO:

7 Q. Agent Rhoades, I'm going to show you what
8 have been marked as Exhibits 9 and 10. If you'll
9 begin with Exhibit 9, then I'll turn your attention
10 to Exhibit 10. Have you had a chance to look at
11 those exhibits?

12 A. Yes.

13 Q. Can you please tell us what Government's
14 Exhibit 9 is?

15 A. 9 is going to be the sweat pants that we
16 saw in the previous photographs.

17 Q. Those are documented in the photographs?

18 A. Yes.

19 Q. And the next exhibit?

20 A. Exhibit 10 is going to be a white pair of
21 boxer shorts, again observed in the photographs
22 previously.

23 Q. And is there a paper bag contained within
24 that plastic bag for each of those exhibits?

25 A. Yes, there is.

1 Q. When you initially collected this
2 evidence, was it stored in the paper bags?

3 A. Yes.

4 Q. And for purposes of the trial, has it been
5 placed in the plastic bags so the members of the
6 jury could see it?

7 A. Yes.

8 Q. And are those the same items you collected
9 from the crime scene on or about March 7, 2014?

10 A. Yes, they are.

11 MR. CASTELLANO: Your Honor, I'd move the
12 admission of Government's Exhibits 9 and 10.

13 THE COURT: Any objection?

14 MR. VILLA: Could we get clarification on
15 9? We've seen photos of two different sweat pants,
16 so I just want to try to clarify which ones he's
17 referring to.

18 A. These will be the gray ones collected from
19 the hospital from Mr. Molina.

20 MR. VILLA: No objection.

21 MR. MAYNARD: No objection.

22 THE COURT: Not hearing any objections,
23 the Court will admit Government's Exhibits 9 and 10.

24 (Government Exhibits 9 and 10 admitted.)
25

1 BY MR. CASTELLANO:

2 Q. Showing you on the visualizer Government's
3 Exhibit 9, are you able to see on this exhibit what
4 appear to be drops of blood?

5 A. Yes.

6 Q. And are those the types of things that you
7 were documenting in the photographs that the jury
8 has already seen?

9 A. Yes.

10 Q. Looking at Exhibit 10, are these Javier
11 Molina's boxer shorts that were collected?

12 A. Yes.

13 Q. The same thing. There appear to be
14 discolorations. Is that what you believe to be the
15 blood that was on the boxer shorts?

16 A. Yes.

17 MR. CASTELLANO: Your Honor, at this time
18 I move the admission of Government's Exhibits 4 and
19 8.

20 THE COURT: Any objection from the
21 defendants?

22 MS. DUNCAN: No, Your Honor.

23 MR. MAYNARD: No, Your Honor.

24 MR. VILLA: No, Your Honor.

25 THE COURT: Not hearing any objection,

1 Government's Exhibits 4 and 8 will be admitted into
2 evidence.

3 (Government Exhibits 4 and 8 admitted.)

4 BY MR. CASTELLANO:

5 Q. I'm going to show you Exhibit 4, but if
6 you need to see it closer, please let us know. I'm
7 showing you here Government's Exhibit 4. If you
8 can, can you tell us what Exhibit 4 is or contains?

9 A. This would be the rope collected from cell
10 105 that had what appeared to be saturation of blood
11 into it.

12 Q. Now, on this exhibit there is a label on
13 here. Can you explain that to the members of the
14 jury in terms of why it's labeled and what the label
15 is for?

16 A. That's going to coincide with the evidence
17 marker in the photographs, the Number 4.

18 Q. When it says item Number 4, when the
19 members of the jury see in Exhibit 4 in the
20 photographs, this should be the same thing?

21 A. Yes.

22 Q. I'm also showing you here -- I'm
23 indicating kind of a red spot there on the bottom of
24 this exhibit. Is that what you initially had
25 thought was possibly blood?

1 A. I believe so. I remember it being darker,
2 but that could be it.

3 Q. And when you collect this evidence, do you
4 then put the stickers on it for purposes of future
5 identification?

6 A. Yes, they'll have our case number, who it
7 was collected by, the date, time, things like that.

8 Q. The white label on this exhibit -- is this
9 your label?

10 A. Yes, it is.

11 Q. I'm going to now refer you to a yellow
12 label on there that says "Northern Forensic
13 Laboratory." Do you know where that label comes
14 from?

15 A. That's their label.

16 Q. And if you know from working with them,
17 what's the purpose of the forensic laboratory having
18 its own label?

19 A. They have their own numbering system that
20 they use to identify and track evidence that they've
21 analyzed.

22 Q. Looking now at Exhibit -- Government's
23 Exhibit Number 8, what are we looking at in this
24 exhibit?

25 A. That's the --

1 Q. And I'll show you the label here, if it
2 helps.

3 A. That's going to be the T-shirt that we
4 examined from Mr. Molina -- collected from him, that
5 has what appears to be a lot of saturated blood and
6 the defects that appear to be from a shank or a
7 stabbing motion.

8 Q. This item is labeled JM-1 where it says
9 item number. Are you able to see that?

10 A. Yes.

11 Q. What was the purpose of labeling the items
12 like this with the letters and a number?

13 A. It helps us to identify who it was
14 collected from. In this case, JM would indicate or
15 be consistent with Javier Molina.

16 Q. If you had collected other items from
17 Javier Molina would they then be numbered JM-2, -3,
18 and -4?

19 A. Yes.

20 THE COURT: Mr. Castellano, would this be
21 a good time for us to take our lunch break?

22 MR. CASTELLANO: Yes, sir.

23 THE COURT: We're going to break a little
24 early today. Mr. Perez is going to run over to see
25 the doctor. So we may have a little bit of an

1 extended lunch break. So if you've been wanting to
2 try a restaurant and didn't think you had enough
3 time, or run some errands, go ahead and do that.
4 We'll shoot for being back in an hour but if you
5 come back, you may be waiting. So we'll wait for
6 everybody. Have a good lunch.

7 All rise.

8 (The jury left the courtroom.)

9 THE COURT: All right. Y'all have a good
10 lunch. We'll shoot for an hour, but it may take
11 longer.

12 (The Court stood in recess.)

13 MS. FOX-YOUNG: Your Honor, can we make a
14 brief record before the jury comes in?

15 THE COURT: Why don't you wait till Mr.
16 Baca gets in?

17 MR. MICKENDROW: We're waiting for two
18 more defendants, Your Honor, Baca and Herrera.

19 THE COURT: All right.

20 Mr. Villa. We'll go on the record.

21 MR. VILLA: Thank you, Your Honor. Mr.
22 Perez has returned from the hospital. I haven't
23 been able to look at all of the paperwork, because I
24 guess it's the United States Marshal's policy that I
25 can't. So I would ask Mr. Mickendrow to provide

1 more information.

2 From what I understand, Mr. Perez had a
3 fever of 101.6. He had a chest x-ray that the
4 doctors were concerned about. He was given five
5 different prescriptions, given a little bit of apple
6 juice. He still hasn't eaten since Saturday.

7 I would ask that the Court delay the trial
8 until tomorrow and we see how Mr. Perez is doing.
9 Some of the prescriptions that he's been given by
10 the doctor have not been filled yet. I understand
11 the marshals are going to work to get those filled.
12 But I think he's got to be competent and got to be
13 able to assist counsel, and he's having a very
14 difficult time. This morning he was having trouble
15 staying awake, having trouble concentrating. Had a
16 very large, pounding headache, he was telling me.
17 So I think in support of this request, I'd ask Mr.
18 Mickendrow to provide whatever additional
19 information he has from Mr. Perez' paperwork.

20 THE COURT: Do you have any additional
21 information?

22 MR. MICKENDROW: I think Mr. Villa summed
23 it up well. They were just concerned about the
24 chest x-ray. They did the flu test. It came back
25 negative for the flu. But they said it's possible

1 that if they didn't catch it early, it would have
2 progressed into the flu. So they did give five
3 different prescriptions. They want him on a
4 nebulizer both morning and evening. And he'll have
5 an inhaler here in court after that, and then he's
6 on antibiotics, as well as a couple of allergy
7 medications to try and clear up the drainage that's
8 going on. So hopefully, that will clear up the
9 chest issue.

10 THE COURT: Thank you. Sounds like he's
11 doing better, doesn't have the flu, doesn't have
12 pneumonia. So I think we better plow ahead. If he
13 runs into problems, alert the Court and we'll --

14 All rise.

15 MS. FOX-YOUNG: Your Honor, I have one
16 exhibit that I'd like to move into evidence before
17 the jury comes out. I probably could do it in 10
18 seconds, or I can do it at another break.

19 THE COURT: Let's do it at another break.

20 (The jury entered the courtroom.)

21 THE COURT: All right. Everyone be
22 seated.

23 Mr. Rhoades, I'll remind you that you're
24 still under oath.

25 Mr. Castellano, if you wish to continue

1 your direct examination of Mr. Rhoades, you may do
2 so at this time.

3 MR. CASTELLANO: Thank you, Your Honor.

4 THE COURT: Mr. Castellano.

5 BY MR. CASTELLANO:

6 Q. Agent Rhoades, I'm going to show you what
7 has been marked as Government's Exhibits 2, 3 and 7.

8 MR. CASTELLANO: May I approach, Your
9 Honor?

10 THE COURT: You may.

11 BY MR. CASTELLANO:

12 Q. I'm going to give you 2 and 3 and I'll
13 also give you Exhibit 7. Agent Rhoades, let me have
14 you look at those briefly, and I'll ask you if you
15 can tell us if you know what's contained within
16 those boxes. And as you're talking about each one,
17 please tell us the exhibit number you're looking at.

18 A. On the box marked Exhibit 7, which will be
19 my item number 7, it's going to be a box containing
20 one of the shanks collected from the pod.

21 Q. And if you remember, where was that shank
22 collected?

23 A. This one was collected further down into
24 the common area, trash container.

25 Q. So if you recall, there is a photograph,

1 and it almost looked like there was a piece of metal
2 coming out of a plastic drinking bottle?

3 A. Yes.

4 Q. Is that the one that would be referenced
5 in Exhibit 7?

6 A. Yes, it is.

7 Q. And please turn to Exhibit 2.

8 A. Okay. Exhibit 2 is going to be my
9 evidence Number 2 and it's going to be a shank that
10 was collected from the common area of the trash can
11 inside the common area, and it's going to be the one
12 that was underneath the chip bag.

13 Q. And the jury looked at the layers of the
14 trash. This is the shank that was on top; or the
15 higher-up shank, I should say?

16 A. Yes, it is.

17 Q. Please turn to the next exhibit.

18 A. Exhibit Number 3 is going to be my
19 evidence number 3 and this is going to be the shank
20 that was collected from the upper shower in the
21 drain.

22 Q. And let me have you open those and take a
23 quick look at them to see if they are in the same or
24 substantially similar condition as when you
25 retrieved them or collected them.

1 A. Number 7 will be the same, Number 2 will
2 be the same, and Number 3 will be the same.

3 MR. CASTELLANO: Your Honor, at this time
4 we'd move the admission of Government's Exhibits 2,
5 3, and 7.

6 THE COURT: Any objection from the
7 defendants?

8 MS. DUNCAN: No, Your Honor.

9 MR. VILLA: No, Your Honor.

10 MR. MAYNARD: No, Your Honor.

11 THE COURT: Not hearing any objection,
12 Government's Exhibits 2, 3, and 7 will be admitted
13 into evidence.

14 (Government Exhibits 2, 3, and 7
15 admitted.)

16 MR. CASTELLANO: May I publish those to
17 the jury over the visualizer here?

18 THE COURT: You may.

19 BY MR. CASTELLANO:

20 Q. Agent Rhoades, I'm showing you
21 Government's Exhibit 2. I'm going to open up the
22 contents of the box here. I'm showing you the shank
23 here in Government's Exhibit 2. Can you see the top
24 of that exhibit where it's pointed? Do you see
25 where there looks like something like thread on

1 there?

2 A. Yes, looks like threading.

3 Q. And also contained in the exhibit is
4 something -- you may recall this from earlier --
5 pieces of plastic and a string?

6 A. Yes.

7 Q. I'm now showing you Government's Exhibit
8 3. Now, based on the way this is shaped, do you
9 recall which shank this was?

10 A. This would be from the shower, the drain
11 in the shower.

12 Q. Next I'm going to show you Government's
13 Exhibit 7. Was this the other piece that was in the
14 bottom of the trash can, if you recall?

15 A. Yes, it is.

16 Q. And can you see on here some sort of
17 threading at the end of this metal also?

18 A. Yes.

19 Q. Now, in the picture there is a plastic
20 bottle. Can you tell the members of the jury
21 whether the bottle in this box was the bottle
22 depicted in that photograph?

23 A. Yes, it is.

24 Q. And what can you tell us about the paper
25 towels on the inside of the bottle?

1 A. I didn't pull any of those out. It was
2 collected as is. So it just appeared like it's
3 paper towels.

4 Q. So this is as you found it?

5 A. Yes.

6 Q. I'm going to ask you: Recently you were
7 asked to look at a shoe belonging to Mario
8 Rodriguez?

9 A. Yes.

10 Q. And did you know, when you were looking,
11 what you were looking for?

12 A. Yes, I did.

13 Q. What did you believe you were looking for?

14 A. A shank.

15 Q. Now, can you tell the members of the jury
16 when you collected items on March 7 and 8 of 2014,
17 whether that included items, personal items,
18 belonging to people in the pod?

19 A. Yes, it was.

20 Q. And did that include their clothing and
21 their shoes?

22 A. Yes.

23 Q. I'm going to show you what have been
24 marked as Exhibits 746 and 746-A.

25 MR. CASTELLANO: May I approach, Your

1 Honor?

2 THE COURT: You may.

3 BY MR. CASTELLANO:

4 Q. Turn first to Exhibit 746. Can you tell
5 us what that is?

6 A. Exhibit 746 is going to be the right
7 Reebok shoe collected from Mario Rodriguez's
8 clothing.

9 Q. And until recently, did you have any
10 reason to look any closer at that shoe?

11 A. No.

12 Q. And what did you do with that shoe?

13 A. Initially, along with the rest of the
14 articles of clothing, it was relinquished into the
15 evidence vault at the State Police office.

16 Q. And had it been sitting in the vault from
17 the time it was seized up until more recently?

18 A. Yes.

19 Q. And recently what did you do with that
20 shoe once you heard something about a shank?

21 A. I searched -- I wasn't initially told
22 which shoe, so I took both the left and the right,
23 and began searching for a shank within the cloth
24 portion of the back of the shoe, where I understood
25 it was located.

1 Q. And how easy or difficult was it to search
2 for any items contained within?

3 A. The cloth portion wasn't too difficult. I
4 was able to cut it with a knife. The sole part of
5 rubber was more difficult, with a knife, to cut into
6 and look.

7 Q. And as a result of your searching, did you
8 eventually find something in that shoe?

9 A. Yes, I did.

10 Q. How were you able to find that item?

11 A. I took an electronic saw and just started
12 dicing through it. So when I cut down through the
13 heel of the right shoe, then I hit the metal shank.

14 Q. And let me turn your attention to Exhibit
15 746-A. You've used the term "shank." Can you tell
16 the members of the jury whether what's contained in
17 746 is what you found within the shoe?

18 A. 746-A is the shank that was found and
19 collected from the shoe.

20 MR. CASTELLANO: Your Honor, I'd move the
21 admission of Government's Exhibits 746 and 746-A, as
22 in alpha.

23 THE COURT: Any objection from the
24 defendants?

25 MR. VILLA: No, Your Honor.

1 THE COURT: Not hearing any objections,
2 Government's 746 and 746-A will be admitted into
3 evidence.

4 (Government Exhibits 746 and 746-A
5 admitted.)

6 BY MR. CASTELLANO:

7 Q. If you can for the members of the jury,
8 please pull the shoe out of the bag, 746, give a
9 quick look at the shoe, and tell them what you did.

10 A. So what I did -- it's in several pieces.
11 Initially I cut off and through the cloth portion of
12 the shoe. And then I went with the electric saw,
13 and then I cut through the back part of shoe. And
14 that's where I -- the saw hit part of that metal
15 shank sticking out. It was actually embedded in
16 this way. And right above that gray color tab you
17 can see.

18 MR. CASTELLANO: May I approach the
19 witness, Your Honor, to retrieve the exhibits?

20 THE COURT: You may.

21 BY MR. CASTELLANO:

22 Q. Agent Rhoades, how many times did you have
23 to search this shoe to find the contents?

24 A. Twice.

25 Q. What happened the first time you searched?

1 A. The first time, I understood that it was
2 in the cloth in the back part of it. So that's when
3 I cut it with a knife. And then I observed in some
4 of the tabs some holes in it, so then I attempted to
5 cut through and did cut through part of that, but I
6 did not see anything.

7 The second time is when I took the -- I'd
8 learned more about where it was located, so then I
9 took an electric saw and cut down straight through
10 the back of the shoe, and that is when I discovered
11 it.

12 Q. Was that on two different dates or
13 occasions?

14 A. Yes.

15 Q. I'm going to show you the content of the
16 box which is 746-A, and I'll ask you if that's what
17 you found inside the shoe.

18 A. Yes, it is.

19 MR. CASTELLANO: Your Honor, at this time
20 I may have more questions of this witness. I think
21 the defense has agreed to let us put on Dr.
22 Kastenbaum out of order. She has to be somewhere
23 tomorrow. So I think with the Court's permission
24 and counsel's, we'll have Agent Rhoades come off the
25 stand and we'll have Dr. Kastenbaum testify.

1 THE COURT: Is that acceptable to the
2 defendants?

3 MR. VILLA: Yes, Your Honor.

4 THE COURT: All right. Mr. Rhoades,
5 you'll need to stay outside of the courtroom until
6 you're called back in to testify. Thank you for
7 your testimony.

8 Dr. Kastenbaum, if you'll come up and
9 stand next to the witness box on my right, your
10 left, before you're seated, my courtroom deputy, Ms.
11 Standridge, will swear you in.

12 HANNAH KASTENBAUM,
13 after having been first duly sworn under oath,
14 was questioned and testified as follows:

15 THE CLERK: Please be seated. State and
16 spell your name for the record.

17 MS. FOX-YOUNG: Your Honor?

18 THE COURT: Yes.

19 MS. FOX-YOUNG: May we briefly approach?

20 THE COURT: You may.

21 (The following proceedings were held at
22 the bench.)

23 MS. FOX-YOUNG: I don't believe that this
24 witness authored the report. She supervised it.
25 I'd just like to do a brief voir dire, make sure we

1 don't have a Crawford problem, outside of the
2 presence of the jury. 45 seconds. I should have
3 raised it earlier. I know the jury just came out.
4 But once she starts testifying, we need to know
5 about it now.

6 THE COURT: Dr. Kastenbaum, if you'll come
7 over and stand right here. Ms. Fox-Young, outside
8 the presence of the jury, is going to ask you some
9 questions about how you prepared your report.

10 THE WITNESS: Okay.

11 THE COURT: This is Ms. Fox-Young. She
12 represents Mr. Perez.

13 VOIR DIRE EXAMINATION

14 BY MS. FOX-YOUNG:

15 Q. There is a declaration, I think on the
16 face page of your report. It says that you either
17 conducted or supervised everything that was done; is
18 that right?

19 A. Yes.

20 Q. It's not signed?

21 A. No. It's standard language that's on the
22 second page of every report. It's by computer.

23 Q. Okay. Can you tell me what portions of
24 the autopsy you conducted?

25 A. None of it. It was conducted by

1 Dr. Leslie Hamilton. I was her supervisor.

2 Q. What did your supervision consist of?

3 A. I am in the room, not necessarily at the
4 table the entire time, while she's performing the
5 autopsy. She'll review findings with me, she gets
6 first crack at drafting the report, and then she
7 gives it to me when she thinks it's ready to go, and
8 review it, edit it, view the photos, and then I have
9 final say in finalizing the report.

10 Q. Did you review the photos?

11 A. Yes.

12 Q. Did you review any other materials that
13 she considered in doing the autopsy herself?

14 A. She drew some diagrams. I would have
15 reviewed those at the time.

16 Q. Are you relying on any of her findings?

17 A. I am relying on her findings, yes.

18 Q. Which findings of hers are you relying on?

19 A. She directed the photographs to be taken.
20 She took the measurements. So Dr. Hamilton does the
21 primary exam. So she draws the diagram. She
22 directs the tech to take whatever photos she wants
23 taken. She takes any measurements of the wounds,
24 describes them, et cetera. So they're basically all
25 her findings.

1 Q. And you didn't go back and remeasure --

2 A. No.

3 Q. -- the wounds?

4 A. No.

5 Q. Is there anything that you -- is there any
6 portion of the autopsy that you went back and
7 considered, or are all of the findings what she did?

8 A. No. All the findings are hers.

9 THE COURT: All right. Do you have
10 anything?

11 VOIR DIRE EXAMINATION

12 BY MS. ARMIJO:

13 Q. Doctor, what is your role as supervisor?

14 A. It's to be available for the fellows,
15 Dr. Hamilton in this case. Should she have
16 questions about any of the things she sees and
17 observes, she runs them by me, et cetera.

18 Q. All right. And then after the autopsy,
19 when you were reviewing, did you have the
20 opportunity to look at the body if you have
21 questions?

22 A. Yes.

23 Q. And you were there to supervise her?

24 A. Yes.

25 Q. Then she goes back and she does her report

1 and meets with you and then you go over it, whether
2 it's consistent with what you have done, as well?

3 A. Yes.

4 Q. Because you were in the room with her;
5 correct?

6 A. The morgue has 12 tables in it. I'm not
7 standing next to Dr. Hamilton the entire time she's
8 doing her exam, because I'm also supervising the
9 three other fellows and residents, so I'm in and
10 out.

11 Q. But you were there available with her and
12 had opportunity to look at the body?

13 A. Yes.

14 THE COURT: All right. Why don't you
15 return to the witness box. Thank you.

16 MS. FOX-YOUNG: Your Honor, may I make a
17 record?

18 THE COURT: You may.

19 MS. FOX-YOUNG: I think there is a clear
20 problem under Crawford and Melendez-Diaz that Dr.
21 Kastenbaum has said she's relying on the findings of
22 somebody else. We're going to be talking about drug
23 testing, measurements of wounds, incisions, and Mr.
24 Perez has a right to confront the person who did
25 that testing and actually performed the autopsy.

1 There are some cases, and I may have had
2 cases, where the supervisor actually did go back in
3 and do analysis and has her own findings to which
4 she could testify. Dr. Kastenbaum has not said
5 that's the case. She's going to review the findings
6 of the fellow, and Mr. Perez has the right to
7 confront the fellow.

8 THE COURT: Is there anything that she can
9 give you that Dr. Hamilton cannot give?

10 MS. ARMIJO: That Dr. Hamilton cannot
11 give?

12 THE COURT: Yeah. What I'm thinking, it
13 sounds to me like probably we need Dr. Hamilton here
14 rather than her.

15 MS. ARMIJO: We can get Hamilton here. We
16 noticed her, nobody objected to her. This is the
17 first -- we've been waiting for her, and we're
18 blinded by the defense counsel causing these
19 charades at this hour, especially with all the
20 pretrial hearings that we did. And we were going to
21 have Dr. Zumwalt come in, so this is the first time
22 we're hearing that there is an objection to it.

23 Given that Mr. Javier Molina -- their
24 clients did not do the actual shanking, we didn't
25 think this would be an issue, per se. But we could

1 probably call -- as long as they will allow us to
2 call Dr. Hamilton, that is fine. But again, I see
3 this as just gamesmanship on their part, given that
4 all we have gone through with pretrial hearings
5 where you have asked about the experts and
6 everything else, and to now do this while she's on
7 the stand.

8 THE COURT: Well, I assume with the
9 defendants making this objection, they don't have
10 any problem with replacing Dr. Kastenbaum with
11 Dr. Hamilton.

12 MS. FOX-YOUNG: Not for Mr. Perez.

13 THE COURT: Anybody else have any
14 objection? Ms. Jacks, does that work for you?
15 Well, let's just switch her out unless there is
16 something here that I missed.

17 MS. ARMIJO: I'm still going to ask the
18 questions if she supervised it, and if she
19 overviewed it without getting -- I'll still ask the
20 questions.

21 MS. FOX-YOUNG: I think it's a problem if
22 she elicits any findings.

23 THE COURT: Don't elicit any findings.

24 MS. ARMIJO: I'm not. I won't elicit any
25 findings.

1 THE COURT: Just keep it clean here. This
2 is not a real critical witness, is it?

3 MS. ARMIJO: No.

4 THE COURT: So there is no reason to
5 interject this into the case.

6 MS. ARMIJO: That's fine.

7 (The following proceedings were held in
8 open court.)

9 THE COURT: Ms. Armijo.

10 DIRECT EXAMINATION

11 BY MS. ARMIJO:

12 Q. Can you please state your name?

13 A. Dr. Hannah Kastenbaum.

14 Q. And Dr. Kastenbaum, where do you work?

15 A. The Office of the Medical Investigator.

16 Q. What is the Office of the Medical
17 Investigator?

18 A. It is New Mexico's statewide medical
19 examiner's office.

20 Q. And what do they do?

21 A. So the medical examiner's office is tasked
22 with investigating certain deaths that fall under
23 its -- its jurisdiction in the state. So anything
24 sudden, unexpected, unnatural, we will investigate
25 deaths of people who die under those circumstances.

1 Q. And if in doing so -- well, let me ask
2 this: What is your educational background?

3 A. I'm a medical doctor, I have an M.D.
4 degree. And after that, I did residency training or
5 on-the-job training in anatomic and clinical
6 pathology, and then I did a one-year fellowship in
7 forensic pathology.

8 Q. And when did you graduate from medical
9 school?

10 A. I graduated from medical school in 2007.

11 Q. And how long have you been with OMI?

12 A. I started at OMI as a fellow in July of
13 2011. And my fellowship ended at the end of June of
14 2012, and then I got hired on and started as faculty
15 or staff on August 1, 2012.

16 Q. And can you explain the difference to the
17 jury between what is a fellow and what is staff?

18 A. So -- when you go -- so you go to medical
19 school, so you graduate with an M.D. or a D.O, so
20 your medical degree. And then you decide what
21 specialty you're going to practice. And you do
22 on-the-job training in that specialty. Basically
23 you learn by treating patients, and that's called
24 residency training, and it varies in number of years
25 depending on the specialty. So I did mine in

1 pathology, which is the study and diagnosis of
2 disease, real broadly. Also includes autopsy
3 pathology, which is examining deceased people to
4 figure out why they're dead.

5 And then after residency training, if you
6 want to further subspecialize, so focus your
7 training a little more, you can do what's called a
8 fellowship, which is more on-the-job training in a
9 slightly more focused specialty. So I did one year
10 of additional training or on-the-job training in
11 forensic pathology, which is the study and diagnosis
12 of disease specifically, again, in deceased people,
13 to figure out why they're dead at the OMI.

14 So when you're a fellow, you are examining
15 deceased people, so you're doing autopsies, but you
16 are supervised by a member of the faculty. So
17 somebody who is fully trained, fully licensed, fully
18 boarded, is responsible for reviewing your findings
19 since you're sort of still learning. And then once
20 you finish your fellowship and you take your board
21 exam in forensics, then you can practice
22 independently without somebody supervising you. So
23 that's what it means to be on the faculty or on the
24 staff at OMI.

25 Q. And so after doing your fellowship, you

1 became part of staff?

2 A. Yes.

3 Q. And so what is it that you do as part of
4 staff?

5 A. So as part of the staff, I both supervise
6 the trainees who are doing autopsy examinations, so
7 the fellows and the residents. So I'm responsible
8 for sort of looking over their shoulder and
9 reviewing their findings and signing off on their
10 reports and their findings. And I also
11 independently examine some deceased people.

12 Q. Now, in reference to -- I guess I'm going
13 to go back to March of 2014 -- what was your
14 position?

15 A. I was on the faculty of the OMI at that
16 time as a Medical Investigator. That's my title.

17 Q. And what's the title of a Medical
18 Investigator?

19 A. That means that I am -- it's another term
20 for Medical Examiner or somebody who is responsible
21 for examining deceased people and deciding why
22 they've died.

23 Q. And was -- do you know if you were a
24 supervisor when Javier Molina's autopsy was
25 performed?

1 A. Yes.

2 Q. Yes, you know?

3 A. Yes, I know, and yes, I was a supervisor.

4 Q. That's probably a poor question on my
5 part.

6 Now, who was the fellow that did the
7 autopsy on Javier Molina?

8 A. Dr. Leslie Hamilton.

9 Q. And were you her supervisor that day?

10 A. Yes.

11 Q. And as a supervisor that day, do you
12 recall what you would have done?

13 A. So as the -- so there are ten faculty --
14 currently ten faculty pathologists at the OMI, I
15 think there were fewer at the time. I don't recall
16 exactly. So we take turns being the doctor in
17 charge for the day.

18 And our job as daily attending, as we call
19 it, is to basically assign out the cases, so that is
20 a list of people we're going to examine on a given
21 day, and we decide who's going to examine who, so
22 the fellow or the faculty, whomever. And then as
23 the daily attending, it's my responsibility to
24 supervise the trainees, so to supervise any fellows
25 who are examining people that day, or any residents.

1 So I would have been the daily attending that day,
2 and supervising Dr. Hamilton in addition to any
3 other fellows or residents who were working in the
4 morgue that day.

5 Q. And would that have included going over
6 and actually looking at Javier Molina's body?

7 A. Yes.

8 Q. Now, what happens after an autopsy is
9 performed?

10 A. How do you mean?

11 Q. Well, after -- well, let me just ask a
12 couple of other basic questions. What's an autopsy?

13 A. So an autopsy is a complete outside and
14 inside examination of a deceased person to figure
15 out why they've died. So we'll document any
16 evidence of natural disease, any evidence of
17 injuries, et cetera, both on the outside of the body
18 and on the inside of the body, including removing
19 and examining the organs individually.

20 Q. After that is completed, what is the task
21 that you all must do?

22 A. So the -- so the bottom line of our job is
23 to determine cause of death, which is the disease or
24 injury that specifically led to death. And manner
25 of death, which is some description of the

1 circumstances under which somebody died. So cause
2 of death can basically be anything. Both of these
3 bits of information, cause and manner, go on the
4 death certificate and also on an autopsy report.

5 And on the death certificate, cause of
6 death is free text; we can basically write whatever
7 we want. Manner of death, which I said is a
8 description of the circumstances. The death
9 certificate, which is a standard form used by the
10 state and the country, has five choices: homicide,
11 suicide, accident, natural, and undetermined, or I
12 don't know. So I have to pick one of those for the
13 manner of death.

14 So after an autopsy, it's the job of the
15 fellow and their supervising physician or attending,
16 to review any other information they know about a
17 person and the circumstances under which they died.
18 The results of any ancillary studies we might do,
19 histology or looking at tissue under the microscope,
20 toxicology or drug testing. There are a whole bunch
21 of options. And come to some conclusion about cause
22 and manner of death for one; and two, generate a
23 report of all of those -- whatever findings,
24 whatever we saw at autopsy. So to generate an
25 autopsy report.

1 Q. And was that done in the case of Javier
2 Molina?

3 A. Yes.

4 Q. Now, I don't want to ask you about the
5 result of anything. I'm just going to ask you a
6 couple of general questions. Did you, in fact, work
7 with Dr. Hamilton in reference to the autopsy that
8 was performed?

9 A. Yes.

10 Q. Did you review the findings that she made
11 in reference to Javier Molina's body?

12 A. Yes.

13 Q. And in connection with that and in working
14 with her, was there a report generated that both has
15 your name and her name on it?

16 A. Yes.

17 Q. And is -- the findings in there, do you
18 agree with the findings in that report?

19 MS. FOX-YOUNG: Your Honor, objection as
20 previously noted.

21 MS. ARMIJO: I'm not asking the results.

22 THE COURT: Let's not do this. Sustained.

23 MS. ARMIJO: All right.

24 BY MS. ARMIJO:

25 Q. Is your name on the report?

1 A. Yes.

2 MS. ARMIJO: All right. I have no further
3 questions.

4 THE COURT: Thank you, Ms. Armijo.

5 Ms. Fox-Young, do you have
6 cross-examination of Dr. Kastenbaum?

7 MS. FOX-YOUNG: I have no questions for
8 this witness. Thank you.

9 THE COURT: Any of the other defendants
10 have any questions?

11 MR. LOWRY: No, Your Honor.

12 MR. MAYNARD: No, Your Honor.

13 MR. JEWKES: No, Your Honor.

14 THE COURT: All right. Dr. Kastenbaum,
15 you may step down. Thank you for your testimony.

16 All right. Does the Government have its
17 next witness or evidence?

18 THE WITNESS: Am I excused?

19 THE COURT: You are. Well, it's up to the
20 Government, since you're their expert. They can
21 tell you whether you're excused or not.

22 THE WITNESS: Thank you.

23 MR. CASTELLANO: Your Honor, we're
24 re-calling Agent Rhoades at this point.

25 THE COURT: All right. Mr. Rhoades, if

1 you'll come up and return to the witness box.

2 Mr. Rhoades, I'll remind you you're still
3 under oath.

4 All right, Mr. Castellano, if you wish to
5 continue your direct examination of Mr. Rhoades, you
6 may do so at this time.

7 MR. CASTELLANO: May I have a moment, Your
8 Honor?

9 THE COURT: You may.

10 MR. CASTELLANO: I was just checking my
11 exhibits. At this point I pass the witness.

12 THE COURT: Thank you, Mr. Castellano.
13 Mr. Jewkes, are you going to -- Ms. Jacks?

14 MS. JACKS: I'm going to do it, Your
15 Honor.

16 THE COURT: All right, Ms. Jacks.

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1 NORMAN RHOADES,
2 after having been previously duly sworn under
3 oath, was questioned and continued testifying as
4 follows:

5 CROSS-EXAMINATION

6 BY MS. JACKS:

7 Q. Good afternoon, Mr. Rhoades.

8 A. Good afternoon.

9 Q. I want to start by asking you some
10 questions about the shoe that you found the shank
11 in, the shoe that you had to cut out -- I think
12 that's Exhibits 746 and 746-A. When did you perform
13 that analysis, or when did you start?

14 A. When I actually started to cut in the shoe
15 I think was the 24th or 25th of January.

16 Q. So just a few days ago? Last week?

17 A. A week or so, yes.

18 Q. And the first time you examined the shoe,
19 you were looking for some sort of shank in it and
20 you couldn't find it?

21 A. Yes.

22 Q. Then you went back the same day or a
23 different day?

24 A. It was the next day.

25 Q. So the 25th of January?

1 A. Yes, I think it was the days -- and it's
2 on the evidence labels -- I believe it was the days
3 of the 24th and 25th.

4 Q. And I want to ask you some questions about
5 the video surveillance at Southern New Mexico
6 Correctional Facility. When you went out the
7 evening of the Molina homicide, did you notice that
8 there were video cameras?

9 A. Yes. And I'm aware that they are, whether
10 they work or not sometimes.

11 Q. I'm sorry?

12 A. Whether they're working or not, I know
13 that there are surveillance cameras each time that
14 I've gone out in the past.

15 Q. Okay. In B pod, the pod where the Molina
16 homicide occurred, how many cameras were in that
17 unit?

18 A. I don't know. It could have been two, but
19 I couldn't say for sure.

20 Q. Is there anything you could review that
21 might help refresh your memory?

22 A. It would just be the overall photographs
23 that we took of inside the pod.

24 Q. You say you think there may have been two.
25 Is that because you recall seeing video footage from

1 two cameras?

2 A. I really didn't have anything to do with
3 the video part of it.

4 Q. That's actually where I was going to go.
5 When you were out there taking photographs and
6 documenting the situation with the crime scene, you
7 did notice that there were video cameras; right?

8 A. Yes.

9 Q. And did you ask anybody which cameras
10 were -- which, if any, cameras were operational that
11 day?

12 A. No, I didn't.

13 Q. And did you make any effort to recover any
14 of the video footage from those cameras at or around
15 the time of the homicide?

16 A. I did not, no.

17 Q. Did you make any inquiry about any other
18 sort of video? For example, how long the video
19 might have been stored or whether there was video
20 from other pods?

21 A. No. Really, anything dealing with the
22 video was assigned to other agents.

23 Q. Okay. Other agents from the New Mexico --

24 A. State Police.

25 Q. -- State Police. Okay. Exhibits 2, 3 and

1 7 are actually items that you booked into evidence;
2 right?

3 A. Yes.

4 Q. And those are potential weapons you
5 recovered the night of the Molina homicide from B
6 pod?

7 A. Yes.

8 Q. Did you talk to anybody about a possible
9 source of where those weapons or potential weapons
10 could have come from?

11 A. No.

12 Q. Did anybody -- did you interview anybody
13 at the prison regarding what's called the wheelchair
14 program where inmates refurbish wheelchairs and
15 walkers for charity?

16 A. No, I did not.

17 Q. Are you aware that such a program exists?

18 A. No.

19 Q. Are you aware if such a program existed
20 back in March of 2014?

21 A. No.

22 MS. JACKS: Thank you. I don't have
23 anything further.

24 THE COURT: Thank you, Ms. Jacks.

25 Anyone else wish to ask questions? Go

1 ahead, Mr. Maynard.

2 MR. MAYNARD: Just a couple of questions.

3 THE COURT: Certainly, Mr. Maynard.

4 CROSS-EXAMINATION

5 BY MR. MAYNARD:

6 Q. Mr. Rhoades, I take it from the answers to
7 the questions just a moment ago, did you make any
8 inquiry into the operation or records of cameras in
9 any of the adjoining pods?

10 A. No, I did not.

11 Q. No? Okay. And to your knowledge, no
12 camera footage was ever preserved from the other
13 pods?

14 A. I'm not aware of anything, no.

15 MR. MAYNARD: No questions.

16 THE COURT: Thank you, Mr. Maynard.

17 Mr. Villa.

18 CROSS-EXAMINATION

19 BY MR. VILLA:

20 Q. Good afternoon, Agent Rhoades.

21 A. Good afternoon.

22 Q. Let me take you back to Exhibit 74. Do we
23 have those? And that's Exhibit 74. And I think it
24 was your testimony that these pants were in a sink
25 in cell 111; correct?

1 A. Yes.

2 Q. And I can't remember if you testified if
3 you knew whose cell was cell 111.

4 A. I could not recall, no.

5 Q. Does it refresh your recollection that the
6 cell was Mario Rodriguez' cell?

7 A. I don't know.

8 Q. And those are the pants that you saw, and
9 ultimately found some blood on those pants; correct?

10 A. Yes.

11 Q. Did you do any testing of the blood?

12 A. No, I did not.

13 Q. You just turned that over to the lab?

14 A. All the evidence was relinquished to
15 then-Agent Palomares, who was the lead on that case.
16 And so from me to him, and then he would facilitate
17 anything being sent to the lab.

18 Q. So let me take you to Government's 79.
19 This is a photograph that you took of one of the
20 individuals inside blue pod; correct?

21 A. Agent Casson actually took the photo. I
22 was present when it was taken.

23 Q. And do you know this individual to be
24 Mario Rodriguez?

25 A. I don't know. These photos were not taken

1 in the blue pod. Actually, they were taken in an
2 office somewhere else in the facility.

3 Q. Did you take the individuals over to this
4 office?

5 A. No.

6 Q. Do you know how they got there?

7 A. They were escorted by correction officers.

8 Q. And is it true that everybody in the pod
9 got escorted by corrections officers?

10 A. Yes.

11 Q. So let me show you Government's 586. Does
12 that look like the same individual who was in the
13 photograph I just showed you, Government's 79?

14 A. Looks similar, yes.

15 Q. And this picture, which has already been
16 admitted as evidence, indicates that this individual
17 is Mario Rodriguez?

18 A. Yes.

19 Q. So do you now remember that the individual
20 who Agent Casson photographed while you were present
21 in Government's 79 is Mario Rodriguez?

22 A. I could say it looks similar to him, yes.

23 Q. And you're saying that based on the photos
24 you're seeing, not necessarily your memory from that
25 night?

1 A. Yes.

2 Q. So I'll talk to you about the shoe you
3 collected that you found the shank in. That just
4 occurred, say, a month ago; is that right?

5 A. About a month, yes.

6 Q. And the reason you looked into that shoe
7 is because you got information there might be a
8 shank in the shoe?

9 A. Yes.

10 Q. And you knew that the shoe had been taken
11 from Mario Rodriguez; right?

12 A. Yes.

13 Q. It took you a couple of times, but
14 ultimately you got into the shoe and you took out
15 that shank that you recovered that the jury got to
16 see just a minute ago?

17 A. Yes.

18 Q. Were you told to look in Mario Rodriguez'
19 shoe for the shank, were you given any reason why
20 you were looking at it?

21 A. Just to recover and document a shank that
22 was hidden in a shoe.

23 Q. Did you recognize that shank as what is
24 often called an icepick?

25 A. I really didn't make any similarities to a

1 specific object other than a piece of metal.

2 Q. I think was it your -- I may be going too
3 far. Let me know. Was it your testimony that that
4 piece of metal appeared similar to, like, metal from
5 a fence or a gate?

6 A. I don't think that was my testimony.

7 Q. Okay. Other than the shanks that we've
8 talked about today, we saw three boxes that you
9 recovered from the blue pod and the one you
10 recovered from Mario Rodriguez's shoe. Did you
11 recover any more shanks from the blue pod?

12 A. No.

13 Q. Did you look for any more shanks from the
14 blue pod?

15 A. I did. Primarily the correctional
16 officers -- they have a specialized unit -- assisted
17 in searching blue pod.

18 Q. Is that the STIU, or the Security Threat
19 Investigation Unit?

20 A. Yes, I think that's it.

21 Q. While you were there, were you made aware
22 of the discovery of any other shanks?

23 A. No.

24 Q. I'm going to take you to Government's 22,
25 please. This is one of the photos you took of blue

1 pod that you talked about in your direct testimony;
2 correct?

3 A. Yes, it is.

4 Q. And I'm going to circle here cell 115. Do
5 you see that there?

6 A. Yes.

7 Q. Now, I'll represent to you there has been
8 in court testimony that Mr. Perez was in this cell
9 at the time of the Javier Molina killing. Were you
10 ever made aware of that?

11 A. No, I was not.

12 Q. Did you ever take any photographs inside
13 cell 115 for any reason?

14 A. There were photographs taken, just
15 overviews, inside the cells that the doors were
16 open. And I don't recollect any specific
17 photographs other than that being taken in cell 115.

18 Q. In cell 115 were you ever asked to take as
19 evidence a walker?

20 A. No.

21 Q. Did you photograph a walker?

22 A. Not to my knowledge, no.

23 Q. Did you see a walker in there?

24 A. No.

25 Q. At any point in the course of your

1 investigation at Southern New Mexico, did you ever
2 see a walker?

3 A. No.

4 Q. Were you ever asked to photograph a
5 walker?

6 A. No.

7 Q. Were you ever asked to take as evidence a
8 walker?

9 A. No.

10 MR. VILLA: Okay. If we could clear the
11 screen, please.

12 Q. Did you ever determine whether any of the
13 surveillance video had an angle into room 115?

14 A. No.

15 Q. Were you provided any information about
16 how the pieces of metal shanks that you found in the
17 trash can or the shower drain -- how they got there?

18 A. No, I was not.

19 Q. So you don't know who put the shank into
20 the shower drain?

21 A. No.

22 Q. Or the trash can?

23 A. No.

24 Q. Let me take you back to Government's
25 Exhibit 82. Do you know that to be a photograph of

1 Mr. Perez, Rudy Perez?

2 A. No. When I reviewed this, I don't -- I
3 can't put a name to him.

4 Q. Okay. And I just want to make sure it's
5 clear, because we haven't seen all the photos. But
6 photographs were taken of everybody who was in that
7 pod?

8 A. Yes.

9 Q. Regardless of whether they were suspected
10 to be involved in the crime or not?

11 A. Yes.

12 Q. And belongings were taken from all the
13 individuals in the pod; correct?

14 A. Yes.

15 Q. When I say "belongings," I mean personal
16 belongings, like clothing.

17 A. The clothing that they wore into this
18 office that were photographed, they were collected.

19 Q. So it didn't matter if you thought they
20 were actually involved in Mr. Molina's killing; you
21 wanted to collect everybody's clothing that they
22 were wearing to see if there was any evidence on
23 there?

24 A. That's correct.

25 Q. And photograph everybody that was in the

1 pod?

2 A. Yes.

3 Q. There was a video that was recovered by
4 Agent Palomares that the jury has seen showing the
5 attack on Mr. Molina. Did you ever watch that
6 video?

7 A. I watched it that night in one of their
8 offices, just a fast real-time, and this was the
9 only time that I've seen that video.

10 Q. Were you ever given information about who
11 the individuals were on the video?

12 A. No.

13 Q. You knew who Mr. Molina was?

14 A. The victim, yes.

15 Q. And the individuals who are seen on the
16 video actually attacking Mr. Molina -- were you
17 provided information about who they were?

18 A. No.

19 Q. I'm going to take you back quickly to 749,
20 the pants in the sink of cell 111. There were some
21 photos we see later of the same pants out to dry;
22 correct?

23 A. Yes.

24 Q. And I noticed that those pants weren't
25 introduced by the Government during your testimony;

1 is that correct?

2 A. That's correct.

3 Q. The actual physical pants themselves?

4 A. Yes, that's correct.

5 Q. But you took custody of those pants;
6 correct?

7 A. Yes.

8 Q. And you still have them?

9 A. Yes.

10 Q. Do you have them here with you today?

11 A. No.

12 Q. Are they back at the evidence room?

13 A. Yes, at the State Police office.

14 Q. And are you familiar with everything
15 that's in the evidence room with respect to this
16 case?

17 A. I don't have it all memorized, but we have
18 the evidence custody list that I can refer back to.

19 Q. And you would agree with me that nowhere
20 in that evidence room is a walker?

21 A. Not that I had anything to do with, no,
22 and I'm not aware of one.

23 Q. You haven't seen one in there related to
24 this case?

25 A. Right. Well, I don't go into the evidence

1 vault. The evidence custodian will do that. But
2 I'm not aware of a walker being inside there.

3 Q. Was it the Government that asked you which
4 items to bring here today?

5 A. Yes.

6 Q. And so the Government didn't ask you to
7 bring the pants that were found in cell 111 that had
8 blood on them?

9 A. No.

10 Q. Did they tell you not to bring them?

11 A. No.

12 MR. VILLA: May I have just a moment?

13 THE COURT: You may.

14 BY MR. VILLA:

15 Q. Agent Rhoades, the shank that was
16 recovered from Mario Rodriguez's shoe just a month
17 or so ago -- did you do any forensic testing on that
18 shank?

19 A. I did not, and I don't believe it was ever
20 submitted to the lab.

21 Q. When it gets submitted to the lab, you
22 know that they can, for instance, swab it for DNA?

23 A. Yes.

24 Q. And the DNA might reveal who touched it or
25 if there is blood on it or things like that?

1 A. Yes.

2 Q. But you didn't do that?

3 A. No.

4 Q. And as far as you know, nobody else did
5 that?

6 A. That's correct.

7 Q. So you just found it in the shoe, put it
8 in the box that's been admitted as part of the
9 evidence, and that's it?

10 A. Relinquished it to the evidence vault
11 under Agent, now Sergeant, Palomares' evidence.

12 MR. VILLA: No more questions, Your Honor.

13 THE COURT: Thank you, Mr. Villa.

14 Mr. Lowry?

15 CROSS-EXAMINATION

16 BY MR. LOWRY:

17 Q. Just a quick follow-up on that forensic
18 question. Do you have any evidence whatsoever,
19 photographic or anything, from what you reviewed at
20 the scene to indicate that that shank taken out of
21 the tennis shoe is related to the Molina case?

22 A. No, I don't.

23 MR. LOWRY: No further questions, Your
24 Honor.

25 THE COURT: Thank you, Mr. Lowry.

1 Mr. Castellano, do you have redirect of
2 Mr. Rhoades?

3 MR. CASTELLANO: Yes, Your Honor.

4 THE COURT: Mr. Castellano.

5 MR. CASTELLANO: May I approach the
6 witness, Your Honor?

7 REDIRECT EXAMINATION

8 BY MR. CASTELLANO:

9 Q. Agent Rhoades, I'm showing you what's been
10 marked as Government's Exhibit 5.

11 A. Oh, okay.

12 Q. Do you recognize that exhibit?

13 A. Yes, I do.

14 Q. What is this?

15 A. That is the green sweat pants.

16 Q. Is that exhibit available to the defense
17 if they want to introduce it today?

18 A. Yes, it is.

19 Q. And all the other evidence collected in
20 this case -- is that available to the defense if
21 they want to move its admission at trial?

22 A. Yes, it is.

23 Q. And if they ask you to bring it, are you
24 willing to bring any of those items for the defense?

25 A. Yes.

1 Q. And they asked you questions about
2 follow-up. Was your job to do anything other than
3 process the scene on that occasion?

4 A. No.

5 MR. CASTELLANO: I pass the witness, Your
6 Honor.

7 THE COURT: All right. Thank you, Mr.
8 Castellano.

9 All right. Mr. Rhoades, you may step
10 down.

11 Is there any reason that Mr. Rhoades
12 cannot be excused from the proceedings, Mr.
13 Castellano?

14 MR. CASTELLANO: No, Your Honor.

15 THE COURT: From the defendants'
16 standpoint, can Mr. Rhoades be excused?

17 MR. VILLA: Yes, Your Honor.

18 MR. MAYNARD: Yes, Your Honor.

19 MR. LOWRY: Yes, Your Honor.

20 MS. JACKS: Yes.

21 THE COURT: All right. You're excused
22 from the proceedings. Thank you for your testimony.

23 Does the Government have its next witness
24 or evidence?

25 MR. BECK: Yes, Your Honor. The United

1 States calls Guadalupe Urquizo.

2 THE COURT: Mr. Urquizo, if you'll come up
3 and stand next to the witness box, before you're
4 seated, my courtroom deputy, Ms. Standridge, will
5 swear you in. Raise your right hand to the best of
6 your ability there.

7 GUADALUPE URQUIZO,
8 after having been first duly sworn under oath,
9 was questioned, and testified as follows:

10 THE CLERK: Please be seated. State and
11 spell your name for the record.

12 THE WITNESS: Guadalupe Urquizo.

13 THE COURT: Mr. Urquizo, Mr. Beck.

14 DIRECT EXAMINATION

15 BY MR. BECK:

16 Q. Mr. Urquizo, please spell your last name
17 for the record.

18 A. U-R-Q-U-I-Z-O.

19 Q. Do you go by any other names, Mr. Urquizo?

20 A. Lupe and Marijuano.

21 Q. When were you brought into the SNM
22 enterprise?

23 A. 1998.

24 Q. And who brought you in?

25 A. Presidente Richard Garcia; Harry Ortega,

1 they call him Butch; and Joe Gordon.

2 Q. What does it mean to earn your bones?

3 A. To earn your bones, you got to either
4 assault or stab or kill somebody.

5 Q. How did you earn your bones?

6 A. I assaulted inmates, correction officers.
7 I eventually stabbed a correction officer.

8 Q. Did you stab someone named Paul Lasner?

9 A. Yes, sir.

10 Q. And why was that SNM-related?

11 A. Well, because that's when I first came to
12 SNM, and that was part of earning my bones. So they
13 asked me if I wanted to do it, and I said yeah.

14 Q. Who asked you?

15 A. At that time it was Leroy Torrez. He was
16 the one running the facility where I was at, at the
17 South.

18 Q. Is Leroy Torrez an SNM member?

19 A. Yes, sir. He was the main SNM leader at
20 that time.

21 Q. Do you have any SNM tattoos?

22 A. Me, yes, sir. I have a few of them.

23 Q. Where are they?

24 A. I have one on my hand, my right hand that
25 says S with an NM inside of it. And I have a 505

1 with an S inside of it. Then I have a big old Zia
2 on my stomach that says "Syndicato de Nuevo Mexico."

3 Q. Does the SNM have a leadership structure?

4 A. Yes, sir.

5 Q. What is that?

6 A. It's like -- it's a tabla or like a panel,
7 and it has like the main person on the top, and then
8 it has, like, a board, a few people, from four to
9 six people on there.

10 Q. While you've been a member of the SNM, who
11 is the leader of the SNM?

12 A. That would be Anthony Baca, Pup.

13 Q. Is Mr. Baca in this courtroom?

14 A. Yes, sir. I don't know where he is.

15 Q. Go ahead and point to him, if you see him.

16 A. He's back there in the back.

17 MR. BECK: Let the record reflect he
18 pointed to the defendant Mr. Baca.

19 THE COURT: The record will so reflect.

20 BY MR. BECK:

21 Q. What types of inmates does the SNM try to
22 recruit?

23 A. They're violent, they're crazy, they're
24 down to do anything. They are down to stab, assault
25 people, bring in drugs, whatever.

1 Q. Why is that?

2 A. Because that's what they want. They want
3 to have control of all the prisons. So you try to
4 pick people that look like the most craziest that
5 are willing to do anything, so that's what they look
6 for.

7 Q. Did you have a hand in recruiting any SNM
8 members?

9 A. Yeah, I recruited a few.

10 Q. Did you recruit someone by the name of
11 Mario Rodriguez, or Blue?

12 A. I didn't actually recruit him, but I
13 helped bring him in by telling him how everything
14 was about SNM, what it stands for, what we do, and
15 so I told Baby Robert that he would be a good
16 candidate to bring in, and he was brought in because
17 of that.

18 Q. Why did you think Mr. Mario Rodriguez was
19 a good --

20 A. Because he had a lot of charges for -- he
21 had just assaulted some corrections officers in
22 Santa Rosa Prison, so we knew that he had that
23 mentality that would be good for SNM.

24 Q. I think you talked about telling Mario
25 Rodriguez some of the rules and how the SNM works.

1 What are those rules?

2 A. The rules is: Number 1, that you always
3 got to be loyal to your brothers, have respect, be
4 willing to do anything, an assault; you have to
5 assault. You can't have sex crimes come in. You
6 can't be telling, you can't be snitching, working
7 with the law. Stuff like that.

8 Q. And what if someone violates those rules?

9 A. Pretty much dead. I mean, you're going to
10 get stabbed. So you get a chance, they're going to
11 stab you.

12 Q. If you bring in someone to the SNM and
13 that person that you bring in violates one of the
14 rules, what's your responsibility?

15 A. To make sure to take care of it. To make
16 sure -- it depends what kind of violation they got.
17 If it was just something simple, then maybe you
18 could get a few people beat him up, or have this
19 thing where you beat somebody up for, like, a minute
20 or two, whatever, a violation. But if it's serious,
21 where they told, or they let one of your brothers
22 down, then more than likely they got to get stabbed.

23 Q. What do you mean, "told"?

24 A. Like if you go and tell the corrections
25 officers or the law enforcement or whoever that --

1 like, telling in prison -- we call it ratting,
2 snitching. That's one thing that you can't do.

3 Q. Does that include testifying in court?

4 A. Definitely, yes.

5 Q. Have you ever testified in court before?

6 A. No, never. This is the first time.

7 Q. I want to talk to you about drugs in the
8 prison. How does the SNM control the drugs in the
9 prison?

10 A. There's many ways to control it. One is
11 by bringing them in, into the visits. You try to
12 hire maybe correction officers by paying them off or
13 even intimidating them, telling them that if they
14 don't bring drugs in, that we know where their
15 family lives, and we're going to do something to
16 their family.

17 There's many ways. Through the mail, in
18 legal mail, or even by other prisoners that bring it
19 in that isn't SNM. If they bring it in, then the
20 SNM will go up to them and tell them, "Since you
21 brought that in, you've got to give it to me," and
22 they'll get a little percentage and the SNM keeps
23 the rest of it.

24 Q. So the SNM takes drugs from prisoners who
25 are not SNM members?

1 A. Yes.

2 Q. While you were in prison with the SNM, did
3 you sell Suboxone?

4 A. Not Suboxone, no.

5 Q. Did you sell other drugs?

6 A. Yeah, before, I have. Before, like,
7 whenever -- be like heroin. I don't do that, so I
8 would get it and sell it or trade it for canteen or
9 whatever. Yes, I have.

10 Q. Why don't you do heroin?

11 A. I don't like doing heroin. But I had a
12 bad episode back in 2009 with methamphetamine. I
13 did methamphetamine and I lost my mind. I didn't
14 know what was going on. I slit my throat and almost
15 killed myself in the county jail. So since then, I
16 try to step away from drugs.

17 Q. Does the SNM get drugs when you go outside
18 the prisons onto the streets?

19 A. Oh, yeah.

20 Q. Have you gotten drugs when you were
21 outside on the streets?

22 A. Yes, I did.

23 Q. And what do you do with those drugs?

24 A. Back in -- I got on -- 2006, I got some
25 drugs and I sold them. I sold them. And then the

1 money that I made I sent to certain brothers that
2 were in prison.

3 Q. Who did you send that money to?

4 A. To David Calbert a few times, to Baby
5 Robert, and Arturo Garcia.

6 Q. Is that expected of you as an SNM member?

7 A. Yes, sir.

8 Q. How do inmates -- how do SNM members
9 communicate with each other inside the prison?

10 A. There's many ways. The huilas, which
11 means kites or letters, you either write a letter to
12 that person and put in it a code where only you and
13 that person know; or even through phone calls. You
14 could call somebody, like you call your wife, and
15 then his wife will call the other wife, and then
16 she'll deliver the message to the other prisoner.

17 Q. Do SNM members talk in code?

18 A. Yes.

19 Q. Have you communicated with other SNM
20 members in code?

21 A. Quite a few with Calbert, with Mario
22 Rodriguez. There's been Victor Martinez, Little
23 Spider. There's a few people that I did like that,
24 yes.

25 Q. I want to talk to you about crimes that

1 you've done that are related to the SNM. Did you
2 assault an inmate related to the SNM in 1998?

3 A. Yes, sir.

4 Q. Who was that?

5 A. Honestly, I don't know his name. I know
6 it's RT, but I was just told, "Hey, youngster, go
7 get him," so I did.

8 Q. Who were you told that by?

9 A. By Leroy Torrez.

10 Q. Is he an SNM member?

11 A. Yes, sir.

12 Q. And then in 1999, did you assault a
13 corrections officer related to the SNM?

14 A. Yes, sir.

15 Q. What happened?

16 A. We had just got moved from Hobbs to the
17 North facility. It was level --

18 Q. Who is "we"?

19 A. The SNM, all the SNM from Hobbs. There
20 was just -- we were causing too much trouble there,
21 a murder had just been committed, so they got tired
22 of having SNM there, so they sent all the SNMers to
23 a North facility. And it was called Program ISU,
24 Intense Supervision Unit. And there were 46 of us
25 there. And out of all 46, everybody started going

1 off, broke the windows, lights, burned, flooded.
2 And no matter what, if you get a chance, you assault
3 a corrections officer.

4 So I was one of the first ones that got a
5 chance. So I head-butted a correction officer as
6 soon as they opened my door to take me to medical.

7 Q. When you said there were 46 of us, there
8 were 46 SNM members? Is that what you mean?

9 A. Yes, sir.

10 Q. In 1999, did you possess a shank related
11 to SNM activities?

12 A. Yes, sir, I did.

13 Q. What was that?

14 A. It was a shank that I had made, and it was
15 for a correction officer, because we were going to
16 try to prove to the corrections officers that we
17 were not going to be locked down. So we were going
18 to try anything and everything we could to get out
19 of the ISU. So we were told by the older SNM
20 leaders to handle that, so that's what we were going
21 to do. So I had a shank to try to stab a CO.

22 Q. In 2002, did you commit a crime outside
23 the prison related to SNM?

24 A. Yes, sir.

25 Q. What happened?

1 A. In 2002, we started having problems --
2 what I mean "we," SNM started having problems with
3 Surenos from California. They assaulted some SNMers
4 in other prisons. So before I got out, Arturo
5 Garcia, Gerald Archuleta, Michael Zamora, and I
6 believe there's another one person, said, as soon as
7 I get out, to try to make a point and try to do
8 something to prove that we were for reals, and try
9 to get ahold of a Sureno and kill them or shoot them
10 or whatever.

11 And I got out April -- I want to say April
12 5th of 2002, and 10 days later I ran into a Sureno.
13 He ran up to my car and told me he was a Sureno. I
14 told him, "Syndicato," and I shot him in the face.

15 Q. What did you do after you shot him in the
16 face?

17 A. I got out of my car, and got on top of him
18 and tried to shoot him again, but my gun got jammed.
19 So I got back in my car and I took off. I went on a
20 hide-speed chase. And I was caught like three
21 months later in Espanola, New Mexico.

22 Q. Did you eventually plead guilty to a crime
23 in connection with that?

24 A. Yes, I pled guilty to possession of a
25 firearm. And they dropped the charges for

1 first-degree attempted murder and shooting from a
2 motor vehicle.

3 Q. Do you know what an STG means in the
4 corrections department?

5 A. Yes, sir.

6 Q. What is that?

7 A. Security Threat Group.

8 Q. Is the SNM an STG?

9 A. They are like the Number 1, yes, Number 1.

10 Q. Is the Surenos an STG?

11 A. Now they are, yes.

12 Q. So is the Surenos another prison gang?

13 A. That's another prison gang, yes, sir.

14 Q. In 2005 did you attempt to commit another
15 crime for the SNM?

16 A. Yes, sir.

17 Q. What did you do?

18 A. I assaulted Robert Saucedo.

19 Q. How did that happen?

20 A. Well, we -- at that time we started having
21 problems again with -- there was another prison gang
22 that was coming along, and they were called the
23 Cruces Boys. Robert Saucedo was one of the guys
24 that started Cruces Boys, and he was disrespecting
25 all the SNMers. So again, the older homies from SNM

1 said, "If you get a chance, try to get this guy."

2 And I was trying to stab him for, like, a
3 week or two. And anytime we go to the yard, we
4 never met up. The day that I finally got a chance
5 to meet up with him, I didn't have a shank. So when
6 I was coming in from rec, I was handcuffed, and he
7 was handcuffed, too. As I was coming in, he was
8 coming out of W pod. So I slipped my cuffs and I
9 punched him, and dropped him to the ground. And at
10 that time another SNM that was coming out from X
11 pod, Edward Garcia, started kicking him. So that's
12 what happened that day.

13 Q. What does "slip your cuffs" mean?

14 A. I was handcuffed in the back. And back
15 then, my hands were even skinnier than they are now
16 and I could slip the cuffs off. I took the cuffs
17 off, I took my right hand off. So by the time he
18 got close to me, I already had my handcuff taken
19 off, and I punched him in the face.

20 Q. In 2002, did you assault a corrections
21 officer related to SNM?

22 A. Yes, sir.

23 Q. What happened?

24 A. That was a correction officer that
25 disrespected all of us in the pod. And there was an

1 older one by the name of Ruben Ojos. He said,
2 "Whoever gets a chance, get this CO for
3 disrespecting."

4 Well, it just happened that later on that
5 day they were supposed to open, I believe, R3.
6 Instead, they opened Q3, which was my cell. And it
7 just happened I came out of my cell. And I called
8 out to that CO and I told him, "Hey, man. Why you
9 disrespecting us?"

10 And they told me, "Just get him."

11 So I assaulted him. I dropped him and I
12 got a broom that was there and I started hitting him
13 with the broom. I broke the broom over his head and
14 just assaulted him with the broom.

15 Q. And how is that an SNM hit?

16 A. Because I was told by -- like I said, he
17 disrespected the S. He was being disrespectful. So
18 Ruben Ojos told me if I get a chance -- well, not
19 just me, but if anybody gets the chance to get him.
20 And I'm the one who had the chance, so I got him.

21 Q. And in December 2016, did you commit a
22 crime for the SNM?

23 A. Yes, sir.

24 Q. What did you do?

25 A. I got into an altercation with Greg

1 Chacon. We were having a little dispute about
2 politics, about how SNM should be ran. He wanted --
3 after everybody got indicted and locked down or
4 whatever, we were still coming out of the Level 4.
5 And he wanted to do it like how Pup, Anthony Baca,
6 wanted to do it, by having this policy where you do
7 roll call, and you got to do mandatory workout, and
8 you got make sure that everybody is doing what
9 they're supposed to do. But that right there --
10 what he was trying to do is a Sureno thing. It's
11 not an SNM thing. So I disagreed with it. And at
12 that time me with another inmate were running that
13 pod. So we disagreed with it, and he got all mad.
14 So I told him, "We'll take care of this," and we got
15 into a fight right there, and I ended up biting his
16 face. So I assaulted him because of that.

17 Q. Who was the other inmate that you were
18 running the pod with in December?

19 A. Javier Rubio.

20 Q. Was he an SNM member?

21 A. Yes, sir.

22 Q. Now, you said you got in a disagreement
23 over politics. How is that related to the SNM?

24 A. Because he wanted to run the SNM the way
25 he wanted to, and I told him that we shouldn't do it

1 like that, but we need to stop doing this -- how do
2 you say -- like back talking, talking bad about
3 other people, because that's what this was every
4 single day, was talking bad about SNM, about this
5 guy and that guy. So me and Javier were trying to
6 put a stop to that, trying to be brothers, and
7 trying to get along as one, and this guy didn't want
8 to do that. He wanted to run it a different way,
9 and we just didn't agree with that.

10 Q. So as an SNM member, if you and Rubio are
11 running the pod at that time and there's another
12 person coming in, Greg Chacon trying to change the
13 rules, is it incumbent on you, as running the pod,
14 to stop that?

15 A. Yes, sir.

16 Q. Did Javier Rubio have a green light or an
17 order to murder him in December 2016?

18 A. Yes, sir, he did. It was put on by
19 Anthony Baca.

20 Q. Did you tell him that?

21 A. Yes, sir, I did.

22 Q. Now, shortly after December 2016, did you
23 agree to cooperate with the Government in this case?

24 A. Yes, sir, I did.

25 Q. When was that?

1 A. It was in, I want to say, like, February
2 26, the end of -- February 26 of 2017.

3 Q. And how did you come to cooperate with the
4 Government?

5 A. I was pulled out by FBI Agent Mr. Acee,
6 and he talked to me about what was going on, and he
7 wanted me to see if I wanted to talk. At first -- I
8 did a lot of thinking. I didn't. And then I
9 decided that I did want to talk to him.

10 Q. Why did you want to talk to him?

11 A. Well, because I was -- I was tired of it.
12 I was tired of the lifestyle, tired of every day
13 having to wake up and worry if I was going to have
14 to get in a fight, have to check somebody for not
15 doing what they're supposed to do and eventually
16 they turn on me. I was just tired of it.

17 Q. In February 2017, did he also tell you
18 that he was targeting you for federal crimes?

19 A. Yes, sir.

20 Q. Did that play into your decision to
21 cooperate?

22 A. Yes, it did.

23 Q. In August of 2017, did you debrief with
24 the FBI?

25 A. Yes, I did.

1 Q. Where was that?

2 A. That was at the FBI headquarters in
3 Albuquerque.

4 Q. That morning, did you meet with Special
5 Agent Acee and the prosecutors and talk about this
6 case?

7 A. Yes, sir.

8 Q. Afterwards, did you meet with David
9 Calbert?

10 A. Yes, sir, I did.

11 Q. Did you know before that morning you were
12 going to meet with David Calbert?

13 A. I had no clue.

14 Q. How long did you and Mr. Calbert meet for?

15 A. I'd say briefly. Five minutes, tops.

16 Q. Did you talk about this case?

17 A. Not really at all. There was only one
18 thing that we talked about, because I was just
19 honest. I told him, "Look, man. It's over. We
20 need to let it go."

21 And he was, like, "Man, I'm thinking about
22 it, but I just wanted to see where you were at."

23 And I told him, "Look, I told them
24 everything. I told them the truth about everything,
25 how you gave me paperwork, how you got it from

1 Jesse."

2 And he's, like, "No, I didn't get it from
3 Jesse. I got it from Joel Martinez, Cheech."

4 So he corrected me on that. That was the
5 only thing that we talked about at all. That's it.

6 Q. So Mr. Calbert actually corrected you who
7 gave him the paperwork?

8 A. Yes, sir.

9 Q. Why did you try to convince Mr. Calbert to
10 cooperate with the Government?

11 A. Because he's one of my good friends.
12 We've known each other since we were pretty much
13 kids. We're from the same hometown. So I just told
14 him "Look, it's over. There's no reason to keep on
15 going with this."

16 And he agreed.

17 Q. And afterwards, did he agree to cooperate
18 with the Government?

19 A. Right after that, yes, sir, he did.

20 Q. Now, you pled guilty and entered a plea
21 agreement and addendum with the United States; is
22 that right?

23 A. Yes, sir, I did.

24 Q. I'm going to show you what's been
25 previously identified as Government's Exhibits 742

1 and 743.

2 MR. BECK: May I approach, Your Honor?

3 THE COURT: You may.

4 BY MR. BECK:

5 Q. Mr. Calbert, do you recognize what I've
6 just handed you as Government's Exhibits 742 and
7 743?

8 A. Yes, sir.

9 Q. Is that your plea agreement and addendum?

10 A. Yes, sir, it is.

11 MR. BECK: Your Honor, at this time the
12 Government moves to admit Exhibits 742 and 743.

13 THE COURT: Any objection?

14 MR. LOWRY: No objection, Your Honor.

15 MR. VILLA: No.

16 MS. JACKS: No.

17 MS. BHALLA: No objection.

18 THE COURT: Not hearing any objection,
19 Government's Exhibits 742 and 743 will be admitted
20 into evidence.

21 (Government Exhibits 742 and 743
22 admitted.)

23 BY MR. BECK:

24 Q. So were you charged in paragraph 4 with
25 the racketeering conspiracy?

1 A. Yes, sir, I was.

2 Q. And in paragraph 5, did you face or do you
3 face a term of imprisonment of up to 20 years?

4 A. Yes, sir.

5 Q. Did you agree with the Government that the
6 sentence imposed in this federal case should run
7 concurrent to your state sentences?

8 A. Yes, sir, I did.

9 Q. And how long do you have on your state
10 sentence?

11 A. It's anywhere from nine to twelve years.

12 Q. Have you heard any other numbers about how
13 long you have to serve?

14 A. The State told me it was like around 15 to
15 16 years. So we're still trying to figure out
16 exactly what it is from good time, if I messed up,
17 or somewhere. I'm not too sure.

18 Q. We saw that you face a term of
19 imprisonment for 20 years. Were you -- did you know
20 that you were being targeted for the murder of
21 Javier Molina?

22 A. Yes, sir.

23 Q. Do you know what that charge would have --
24 how much prison time you would have been facing if
25 you were charged with that?

1 A. A life sentence.

2 Q. Did you enter this plea agreement after
3 Mr. Calbert decided to cooperate with the
4 Government?

5 A. Yes, sir.

6 Q. Do you consider facing 20 years instead of
7 a life sentence a benefit?

8 A. It's a lot different, so, yes.

9 MR. BECK: Bring up Exhibit 743, please.

10 Q. Mr. Urquizo, what do you understand this
11 paragraph to mean about your cooperation?

12 A. By me being truthful, that it's --
13 hopefully, after everything is said and done, that
14 maybe the courts will consider what my plea is and
15 maybe give me 20 or less than 20 years.

16 Q. Paragraph 2. Read through that, and what
17 is required of you for this plea agreement?

18 A. I have to testify truthfully, to be honest
19 about everything.

20 Q. Paragraph 6, please. Now, I think you
21 talked a little bit about this. What do you
22 understand this paragraph to mean?

23 A. That means once all the courts are done,
24 that the courts will try to put a 5K to see if they
25 could maybe lower my time for me being honest and

1 truthful about everything.

2 Q. And if you aren't honest and truthful
3 about everything, what happens?

4 A. My plea gets thrown out, and I could get
5 charged with a different charge.

6 Q. Beside the 20 years, the concurrent State
7 sentence, have you received any other benefits from
8 the Government for cooperating?

9 A. A little benefit. I received a little bit
10 of money. I think maybe like \$200, \$300, I think.
11 I got one contact visit with my family. And that's
12 pretty much it. Maybe a little bit of extra phone
13 calls.

14 Q. Since you've been cooperating with the
15 Government, have you called your family?

16 A. Yes, a lot.

17 Q. Have you talked to them about your
18 sentencing in this case?

19 A. Yes, sir, to some, yes, I have.

20 Q. All right. What have you told your mom
21 about what you're receiving in this case?

22 A. I told them -- not my mom. My wife.

23 Q. I'm sorry, your wife.

24 A. That I'm hoping that I can get anywhere
25 from 10 to 15 years, hopefully that. I mean, I

1 don't know exactly how much time, but I told her
2 that because I want her to feel good because of all
3 this stuff that's going on.

4 THE COURT: Mr. Beck, would this be a good
5 time for us to take our afternoon break?

6 MR. BECK: Sure, Your Honor.

7 THE COURT: All right. We'll be in recess
8 for about 15 minutes. All rise.

9 (The jury left the courtroom.)

10 THE COURT: All right. We'll be in recess
11 for about 15 minutes.

12 (The Court stood in recess.)

13 THE COURT: All right. Let's go on the
14 record. As she was leaving, one of the jurors,
15 Ms. May, juror number 13 -- let me make sure that's
16 the right one -- gave this note. She said, "Judge
17 Browning, may I please request a list of the exact
18 charges against each of the defendants? Also a list
19 of the names of all the attorneys and which
20 defendant they are representing. Thank you. Laura
21 Dean May."

22 I guess I had a couple of thoughts. One
23 is, I could just give them a copy of the preliminary
24 instruction, if everybody agreed. That's got
25 everybody's names. It's got a brief description of

1 the charges. They've already been given that. And
2 it gives the names of the attorneys.

3 Another is: I can prepare a little chart,
4 certainly, of the attorneys and the defendants so
5 that they match who it is. And I'll try to -- I
6 started this at the beginning of the trial, and then
7 I kind of phased it out. But every time I ask if
8 you have cross-examination, I will say "on behalf
9 of" a defendant so that helps them match the
10 attorneys with the defendants.

11 Any thoughts from anybody as to how to
12 address or should we address? Mr. Lowry?

13 MR. LOWRY: Well, Your Honor, I'm fine
14 with handing out preliminary instructions. What I'm
15 guessing may be an issue with the jurors is, they're
16 hearing all this enterprise evidence, and they just
17 don't understand how it fits into the case. So I'm
18 thinking that the jurors are thinking there's a lot
19 more charges out there than the VICAR charges we're
20 considering.

21 THE COURT: It could be. It could be
22 they're just having trouble matching attorneys
23 with --

24 MR. LOWRY: But as long as it's that, we
25 could get preliminary instructions, like you said.

1 I'm fine for that. I don't want to get anything
2 beyond that, however.

3 THE COURT: Does the Government have any
4 problem with me just passing out the preliminary
5 jury instruction?

6 MR. CASTELLANO: No, Your Honor, there is
7 no objection to that. It's already public record.
8 They've already heard it, and I think it would be
9 fine.

10 THE COURT: Any defendant have a problem
11 with that?

12 MS. JACKS: I'm fine with that.

13 THE COURT: Ms. Bhalla, Mr. Maynard?

14 MS. BHALLA: We have no objection.

15 THE COURT: Does that work for you,
16 Mr. Villa? Ms. Fox-Young?

17 MR. VILLA: I think that works, Judge.

18 THE COURT: Okay. All right. So we'll
19 make a set of the preliminary instructions and make
20 18 of them and give those to the jury. I'm not
21 sure -- I think the caption on the thing may have
22 every defendant in the case. Do you want me to make
23 a caption, just the four defendants here?

24 MS. JACKS: I would prefer that.

25 THE COURT: Okay.

1 MR. LOWRY: I would prefer that, Your
2 Honor.

3 THE COURT: Why don't I just make a
4 caption with the four current defendants in the
5 case.

6 MR. BECK: We don't object to that.

7 THE COURT: All right.

8 MR. VILLA: And Your Honor --

9 THE COURT: I'm going to have Ms.
10 Standridge mark that note as Exhibit -- I think it's
11 F. If I need to correct it later on, I will.

12 Mr. Villa.

13 MR. VILLA: Just to clean up the record,
14 the exhibit, the phone call that Ms. Fox-Young
15 played for David Calbert was Z1, and it was played
16 but not admitted. Can we admit that?

17 THE COURT: Any objection?

18 MR. BECK: I think since -- I mean, since
19 it was played for a limited purpose, yes, we object
20 as it's hearsay. It wasn't offered for the truth of
21 the matter asserted.

22 THE COURT: Yeah, let's leave it with the
23 instruction we had. It was impeachment. It was
24 sort of like you read a statement, say, "Didn't you
25 say that?" Let's leave it at that.

1 MR. VILLA: Rather than admitting it?

2 THE COURT: Rather than admitting it. All
3 right. We're going to -- should it be with the
4 a/k/a's or without the a/k/a's on the caption?

5 MR. VILLA: Without the a/k/a monikers.

6 THE COURT: Without them?

7 MR. BECK: I think the caption of the case
8 in the indictment has the monikers, and I also think
9 it's helpful for them to understand the testimony in
10 court, because oftentimes these gentlemen are
11 referred to by their monikers by the witnesses.

12 THE COURT: How do the defendants feel?
13 Do you care?

14 MS. FOX-YOUNG: Your Honor, we would ask
15 that the a/k/a's not be included. I think it's
16 confusing. I think it's unnecessary. And I think
17 it's --

18 THE COURT: All right. Well, let me
19 prepare something, then we'll take a look at it.
20 We're going to give the jury a preliminary jury
21 instruction, but we're just going to make the
22 caption the four defendants here. At the present
23 time, we'll just take out the monikers, and just
24 have the four defendants, and I'll take a look at
25 that.

1 Didn't the preliminary have everybody on
2 there?

3 THE CLERK: Yes.

4 THE COURT: So let's get that. We may
5 have to make some change to the caption. I think
6 there was a second preliminary instruction or
7 something. Let's take a look at it. All rise.

8 (The jury entered the courtroom.)

9 THE COURT: I'll try to prepare, when we
10 have a chance, a set of the preliminary instructions
11 that I gave you at the beginning of the case, and
12 this will have the names of the attorneys, it will
13 have the names of the defendants, and it will also
14 have the charges against the defendants. So I'll
15 try to prepare that for you and get that to you so
16 that will help you follow along, if you need that.

17 Mr. Urquizo, I remind you that you're
18 still under oath.

19 Mr. Beck, if you wish to continue your
20 direct of Mr. Urquizo, you may do so at this time.

21 BY MR. BECK:

22 Q. Mr. Urquizo, I think before we broke, you
23 were talking about telling your wife or your
24 girlfriend about a 15-year sentence in this case.

25 A. Yes, sir. I was just telling her that I

1 was hoping that I could get anywhere from 10, 15. I
2 wasn't too sure, you know. The truth is, I could
3 get 20, but I just didn't want to tell her that,
4 because we're already going through a lot of things,
5 so --

6 Q. Well, do you expect to get less than 20?

7 A. Well, I'm hoping. I'm being truthful.
8 I'm hoping that the Court would give me a chance.
9 That's what I'm hoping. I mean, it's not promised
10 to me, but I hope so.

11 Q. My question was: Do you expect to get
12 less than 20?

13 A. Yeah. Hopefully, yes.

14 Q. What do you have to do to get that?

15 A. Do what I'm doing right now: Be honest.

16 Q. You and I have met a couple of times to
17 prepare for your testimony; is that right?

18 A. Yes, sir.

19 Q. How many times?

20 A. I think three, about three times, three or
21 four times.

22 Q. Now, the first time we met, was that a
23 couple of weeks ago?

24 A. The first time?

25 Q. The first time we met to prepare for your

1 testimony.

2 A. Oh, yes. About, yeah -- about a couple of
3 weeks ago.

4 Q. After that, did you get into a
5 disagreement with corrections?

6 A. Yes, sir, I did.

7 Q. What happened?

8 A. They went and told me that I was leaving
9 on transport, and I thought it was for court, so I
10 asked if it was for court. They said, "No, I think
11 you're going back to Otero County."

12 So I pretty much told them, "Well, I'm not
13 going. I refuse."

14 I told them that. They were, "Why?"

15 I said, "Because I was just there for
16 three months, and I was sent to Penitentiary of New
17 Mexico, and then sent back five days later." So I
18 told them no, and I want to talk to Captain Sapien
19 about it.

20 Q. When did this happen?

21 A. This happened on February 1st.

22 Q. Was that last Thursday?

23 A. Yes, February 1st, 2018.

24 Q. Why did you not want to go back to Otero
25 County?

1 A. Because I was there for three months, and
2 I don't like the environment there. It's dirty.
3 It's a dirty jail. I just didn't like it. And
4 every time you leave that facility, if you're
5 leaving not for court but just leaving, even if it's
6 for one day and you go back, everything that you
7 bought there, whatever, you can't get it back,
8 because you've got to start over every time, and it
9 takes, like, a week for you to buy your own hygiene,
10 your own clothing. So it's uncomfortable to live
11 like that for a week or two without nothing. So I
12 didn't want to go back.

13 Q. Did you tell -- did you feel -- on
14 Thursday, February 1st, did you feel you'd been
15 treated unfairly by Corrections?

16 A. Yes, sir, I did.

17 Q. Why?

18 A. Well, because while I was gone for those
19 three months, I was in Otero County, and when I went
20 back to the penitentiary, all my stuff was missing.
21 My TV was missing, all my commissary, my address
22 book was tore out. A lot of photos of my family
23 were missing. And then there was a few things that,
24 when I was there, that I was supposed to get, maybe
25 a few contact visits, and never got none of it. I

1 thought I was being treated from everybody else. So
2 yes, I really did feel like I was being mistreated.

3 Q. Did you eventually, Thursday, agree to get
4 on that transport and come down to Otero County?

5 A. Yes, I did.

6 Q. In 2012, 2013, where were you
7 incarcerated?

8 A. Penitentiary of New Mexico North facility.

9 Q. Was the defendant Mr. Baca incarcerated at
10 the North facility with you?

11 A. Yes, sir, he was.

12 Q. Did you two interact while you were
13 incarcerated up there?

14 A. Yes, sir, I did.

15 Q. Before we get there, where were you and
16 where was Mr. Baca?

17 A. Mr. Baca was in 3-B X pod and I was in 3-B
18 W pod.

19 Q. So does that mean that you were in the
20 same housing unit, but in different pods within that
21 one unit?

22 A. Yes. 3-B has four pods. And I was right
23 next to him.

24 Q. And what was Mr. Baca's position in the
25 SNM at this time?

1 A. SNM Gang leader.

2 Q. At some point did you engage in a
3 conversation with Mr. Baca at that North facility?

4 A. Yes, sir. We were outside for rec.

5 Q. Hold on one second. Go ahead and tell me
6 what you and Mr. Baca discussed while you were
7 outside at rec.

8 A. We discussed the fact that I was going to
9 be going to the Level 5 facility and from there to
10 Southern. So we discussed the fact that there was
11 paperwork on Javier Molina, and he needed to be hit.
12 So he needed me to take the word down there since I
13 was going to be the next person to go to Level 5,
14 then from Level 5 to Level 4.

15 Q. Level 5. Is that at the South facility?

16 A. Yes, sir, the South facility.

17 Q. And then Southern. Is that Southern New
18 Mexico Correctional Facility, or SNMCF, here in Las
19 Cruces?

20 A. Yes, that's the Level 4 facility.

21 Q. Was that the only conversation that you
22 had with Mr. Baca at the North about Javier Molina
23 getting hit?

24 A. No, that was actually the third time. The
25 last time that I had a conversation with him was

1 with -- he had got moved for 3-A; he was in Q pod.
2 And I was outside at rec and over there in 3-A Q pod
3 you could talk to the people that are in the cages.
4 I was in the first cage, and I told him I was
5 leaving to the South.

6 Q. What did Mr. Baca say when you told him
7 you were leaving to the South?

8 A. He told me, "Don't forget that message.
9 Take care of that."

10 I told him, "I already know. I got you."

11 Q. What do you understand he meant when he
12 said, "Don't forget that message. You need to take
13 care of that"?

14 A. He spelled it out on the window for me.
15 He didn't yell it out, but he said "Javier Molina."

16 Q. How did he spell it out on the window?

17 A. With the sign language. With his hands.
18 We know how to talk with our hands. We know how to
19 do letters like this. That's how he did it.

20 Q. Talking with your hands -- is that one of
21 the ways that the SNM talks in code?

22 A. Yes, sir.

23 Q. So with his hands he told you it was
24 Javier Molina?

25 A. Yes, sir.

1 Q. At some point were you moved down to the
2 South facility at PNM?

3 A. Yeah. That same day that I talked to him,
4 that's the day I left to the PNM South.

5 Q. And at some point at PNM South, did David
6 Calbert come down to PNM South, and was he housed
7 with you?

8 A. Yes, sir. February -- I believe February
9 of 2014, he showed up to the PNM South.

10 Q. And what happened when he showed up to the
11 PNM South?

12 A. He had the paperwork for Javier Molina.
13 So he called me, Robert Martinez, and Mauricio
14 Varela to his house, and he showed the paper to us
15 through the window and then he passed it to me.

16 Q. The house? What do you mean by "the
17 house"?

18 A. Oh, his cell. Yeah, in front of his cell
19 door.

20 Q. So he was inside of his cell, and who was
21 on the outside?

22 A. Me, Mauricio Varela, and Robert Martinez.
23 For the first seven days, it's orientation, so he
24 can't come out. So we were in front of his door.

25 Q. And what did Mr. Calbert tell you?

1 A. That he had the paperwork for the hit on
2 Javier Molina, and I told him -- he said, "Pup wants
3 this done."

4 I said, "Yeah, I already know. I talked
5 to him."

6 Q. Did he give you the paperwork?

7 A. Yes, sir, he did.

8 Q. What did the paperwork look like?

9 A. It was a white paper, and it had a
10 person's name on the top side with Social Security
11 and all that, address, and it was a whole typed
12 paper. And the wording on there, do you want me to
13 tell you what it said on there?

14 Q. Hold on. We'll get to that. Was it one
15 page, two-page?

16 A. It was just the one page.

17 Q. And was it front and back, or just on the
18 front?

19 A. No, just one. Just the front page.

20 Q. Was it -- what did it look like? Was it
21 just black and white?

22 A. Black and white. It was a Las Cruces
23 police report. And I could tell it was a police
24 report.

25 Q. What did the paperwork say? Why was it

1 paperwork on Mr. Molina?

2 A. It said that he was in -- that it wasn't
3 him that did the purse-snatching; that it must have
4 been one of the other guys. And he named Jesse Sosa
5 as one of the other guys that did the
6 purse-snatching; that he was just sitting in the
7 car. It was pretty much one sentence, maybe two
8 sentences. That's it.

9 Q. Where did the purse-snatching happen, if
10 you remember?

11 A. I believe it said by the mall. By the
12 front of the mall or behind the mall.

13 Q. In what city?

14 A. Right here in Las Cruces.

15 Q. Did you -- what did -- did you and anyone
16 talk about the paperwork?

17 A. Yeah. While we were there, we discussed
18 it and we're, like, "Man." I mean, before
19 everything happened we like laughed at it and said,
20 "Man, this ain't really telling," because it wasn't
21 really telling.

22 Q. Who is "we"?

23 A. Me, David Calbert, Mauricio Varela, and
24 Robert Martinez.

25 Q. And did you still agree to transport the

1 paperwork from the South facility to Southern New
2 Mexico?

3 A. Yes, sir. Yeah.

4 Q. Why?

5 A. Because it's a hit. It's an order to hit,
6 and you can't just get rid of it. You would have a
7 hit on yourself for that.

8 Q. Did you willingly take the paperwork from
9 the South facility to Southern?

10 A. Yes, sir.

11 Q. Did you know or think that that would
12 result in Javier Molina being murdered?

13 A. Yes, they wanted him murdered. It wasn't
14 just an assault. They wanted a murder.

15 Q. What did you do with the paperwork after
16 Mr. Calbert gave it to you?

17 A. I put it with the paperwork. I had a lot
18 of paperwork for my Court of Appeals. It's a whole
19 stack. So I took half of it out and put it there,
20 and put all my paperwork back together.

21 Q. So you put it in your legal paperwork, in
22 the Court of Appeals paperwork?

23 A. Yes, sir.

24 Q. How big was the Court of Appeals stack?

25 A. Probably about this much of a big stack.

1 There was probably like 1,000 sheets of paper.

2 There was a lot of Court of Appeals for seven or
3 eight years, so it's a lot of paperwork.

4 Q. So I've got here two Redwelds full of
5 pages. Was it thicker or less thick than this?

6 A. Probably a little bit thicker.

7 Q. A little bit thicker than these two
8 Redwelds full of paper?

9 A. Yes, sir.

10 Q. Why did you stick it in the middle of your
11 legal paperwork?

12 A. Because corrections officers really --
13 they can't go through your legal paperwork. Once
14 you get transferred somewhere, they're supposed to
15 maybe have, like, a legal library guy that's
16 supposed to go through your paperwork, more or less,
17 and look at it and give it to you. So I knew the
18 chances of that happening -- usually they just put
19 all your property in the bag and inventory and give
20 it to you. So I figured that would be the easiest
21 way to do it.

22 Q. At some point were you transferred from
23 the PNM South facility to Southern New Mexico?

24 A. Yes, sir, on March 6 of 2014.

25 Q. Was that the day before the Molina murder?

1 A. Yes, sir.

2 Q. Did you take the paperwork with you?

3 A. Yes, sir, I did.

4 Q. What happened when you got to the Southern
5 New Mexico facility?

6 A. As soon as I got there, I went through the
7 medical process. All my property stayed in the
8 front. I couldn't get because it was like 7:00 or
9 8:00 o'clock in the nighttime. So I had to wait
10 till the next day to get it. But as I was going
11 from there to housing unit 1-A -- that's where they
12 housed all the SNMers -- at the first pod I talked
13 to Mario Rodriguez and Timothy Martinez. They were
14 at the window. And the first thing he told me was,
15 like, "You got that?" Looked at me like, "I got
16 that."

17 I told him, "Yeah."

18 So he told me to go to the side of the
19 door. So I walked into yellow pod.

20 MS. JACKS: I object. The question is
21 asked and answered. This is becoming a narrative.

22 THE COURT: Try to keep it from being a
23 narrative by breaking it up with questions.

24 BY MR. BECK:

25 Q. Okay. When you walked into the housing

1 pod at Southern, what did you see in the doorway to
2 blue pod?

3 A. I seen Timothy Martinez and Mario
4 Rodriguez.

5 Q. And what happened?

6 A. I walked to the side of the door, and as
7 the corrections officer was searching my cell, I was
8 talking to Mario, and he asked me if I had paperwork
9 on Javier Molina, as well as --

10 Q. Hold on one second. Where were you and
11 where was Mario when he asked if you had the
12 paperwork on Javier Molina?

13 A. On his side of the door. There is a door
14 between blue pod and yellow pod, so it was in the
15 middle. There is a door right there. We were
16 talking through the door.

17 Q. Okay. So he was in blue pod on one side
18 of the door that separates them, and you were in
19 yellow pod on the other side?

20 A. Yes, sir.

21 Q. Why weren't you in your cell?

22 A. Because a corrections officer was
23 searching my cell.

24 Q. And were you able to just walk around
25 freely while he was --

1 A. Yeah. I stood at the door talking to him
2 for, like, five or ten minutes.

3 Q. And what did you and Mr. Rodriguez discuss
4 at the door?

5 A. He asked me if I had the paperwork on
6 Javier Molina. I told him yes. And he kind of
7 whispered real low if I had Jerry Montoya's
8 paperwork as well. I told him, "No, that paperwork
9 didn't make it."

10 So he said, "I wrote you a letter
11 already," and he slid it under my door, under the
12 door between blue pod and yellow pod. So I grabbed
13 it. And I told him that the paperwork was in my
14 property. I wasn't going to get it until tomorrow.
15 So he said as soon as I get it, to pass it to them.

16 Q. So he slipped you a note under that door
17 that separates the two pods while you were talking?

18 A. Yes, sir. Prior to me getting to the pod,
19 my name was already on the board. I was already in
20 the front for, like, two hours. So they had already
21 put my name on the chalk board, who was arriving,
22 all of that. So they already knew. So they had a
23 letter waiting for me.

24 Q. Did anyone else -- when you got to the
25 Southern New Mexico facility and you were put in

1 yellow pod, did anyone else ask you about the Javier
2 Molina paperwork that day?

3 A. Yes, sir.

4 Q. Who else?

5 A. Carlos Herrera.

6 Q. And what did they say?

7 A. They asked if I had that paperwork on
8 Javier Molina. I told him yes, but it was in my
9 property.

10 Q. Did you discuss anyone else besides Javier
11 Molina and Mr. Montoya, Jerry Montoya, being hit?

12 A. Yes, sir, Sammy Gonzalez, Gumby.

13 Q. And who is that?

14 A. He's an SNM Gang member, too.

15 Q. And who wanted Gumby to be hit?

16 A. Actually, that was a personal issue that I
17 had with him for a long time. So I had asked Carlos
18 Herrera if it was still good to go with that, and he
19 said yes.

20 Q. After you talked with Mr. Herrera about
21 the paperwork and about Gumby, did you read the
22 letter that Mario wrote to you?

23 A. Yes.

24 Q. And what was in that letter?

25 A. He told me that he was hoping I had the

1 paperwork because he's ready to get rid of Javier
2 Molina; nobody liked him. And he was hoping that I
3 had the paperwork on Jerry Montoya, too, because he
4 wanted to hit him. And as well, he knows the
5 personal beef that I had with Sammy Gonzalez, and it
6 was okay for me to handle that. As soon as we got
7 the chance, we could take care of all that together.

8 Q. What happened after you read the
9 paperwork -- or sorry, not the paperwork; the note
10 from Mr. Rodriguez?

11 A. I wrote him back. I wrote him back and I
12 told him, "Yes. Like I told you, I have the
13 paperwork on Javier Molina." The paperwork on Jerry
14 Montoya was at the North, but we couldn't get it in
15 time, and definitely want to get Sammy Gonzalez,
16 too.

17 So he said, "We're going to try to take
18 care of this as soon as possible."

19 And I asked if we could wait until I come
20 off of orientation, so I could take care of that,
21 which was seven days I had to be in orientation.

22 Q. If you were in orientation, how did your
23 note that you wrote back to Mario Rodriguez -- how
24 did that get to him?

25 A. I had asked Carlos Herrera to pass it for

1 me, because I was locked down, but they were still
2 out in the pod.

3 Q. At some point did you get your property
4 and the paperwork?

5 A. Yes, sir. The next day, like, around
6 11:00 in the morning.

7 Q. What happened when you received that
8 paperwork on Javier Molina?

9 A. Everybody was asking -- not everybody.
10 Like Carlos Herrera, Alex Munoz, Dale Chavez, in my
11 pod were asking for it right away. And the guys
12 next door in blue pod. Mario Rodriguez was already
13 at the door, hitting the door asking if I got that,
14 if I got that. I said, "Hold on. I barely even got
15 my stuff in my cell."

16 So I didn't even unpack my stuff. I went
17 straight for my legal paperwork.

18 Q. Let me stop you right there. And I think
19 you've gone over this, but just to make clear. Why
20 were you in your cell and Mr. Munoz, Mr. Herrera,
21 and I think you said Dreamer --

22 A. Yeah, Dale Chavez.

23 Q. Why are they outside your door and why are
24 you inside?

25 A. Because they were Level 4. They come out

1 all day. I was still on orientation. I have to do
2 seven days in my cell to make sure everything is
3 okay, make sure I had no problems with anybody in
4 the pod, and then they would let me out with
5 everybody else.

6 Q. And when they asked for the paperwork and
7 you were getting your property out, what happened?

8 A. As soon as I got my property, like I said,
9 they were asking about it. I didn't even unpack my
10 stuff. So I went straight for my paperwork, and I
11 got the paper out. I called Carlos Herrera, Dale
12 Chavez, and Juanito Mendez to the door, and I showed
13 them the paperwork. It was underlined with a
14 pencil, the two lines of what the statement was,
15 that Javier Molina made. And we kind of all laughed
16 about it, too, because it wasn't really telling.
17 And we looked at it, and gave to it Lazy, to Carlos
18 Herrera.

19 Q. How did you give to it Mr. Herrera?

20 A. Under the door.

21 Q. And what happened when you gave to it
22 Mr. Herrera?

23 A. He looked at it real close himself, and
24 then passed it to Juanito Mendez, and then Dale
25 Chavez. All three of them looked at it real good.

1 And then Blue was knocking at the door. Mario
2 Rodriguez was knocking, "Hey, what's up with that?
3 What's up with that?"

4 And they went to the door and they talked
5 a little bit, and he gave him the paper.

6 Q. Who gave whom the paper?

7 A. Carlos Herrera.

8 Q. Gave who the paper?

9 A. To Mario Rodriguez.

10 Q. And Carlos Herrera -- is he in the
11 courtroom today?

12 A. Yes, sir.

13 Q. Where is he?

14 A. He's right there on the first table right
15 there.

16 MR. BECK: Let the record reflect that he
17 pointed to the defendant Mr. Herrera.

18 THE COURT: The record will so reflect.

19 BY MR. BECK:

20 Q. What happened after Mr. Herrera put the
21 Javier Molina paperwork under the door?

22 A. Came back. He just came back to my house,
23 back to my cell, and told me he gave it to them and
24 let's see what they're going to do and see if
25 they're going to do it right now or what.

1 Sure enough, like about 20 minutes later,
2 Mario Rodriguez wrote me a letter, gave it to Carlos
3 Herrera, gave it to me, and I read it.

4 Q. What did this letter -- what did this
5 second letter from Mr. Rodriguez say?

6 A. The letter said, "Yeah, that's good that
7 you got this paperwork on this fucker. Now we could
8 take care of him. Obviously, nobody likes him, so
9 we're going to take care of him. I wish you would
10 have had the paperwork on Jerry Montoya. But since
11 you don't, we're going to go ahead and do this
12 probably after dinner."

13 And he apologized to me about Sammy
14 Gonzalez, because he knows I have that personal beef
15 with him, and I really wanted to get ahold of him,
16 and it wasn't going to happen. So he apologized for
17 that. He said, "Maybe after this is over, maybe it
18 could still happen."

19 Q. Later on, at some point, do you take a
20 shower?

21 A. Yes, sir.

22 Q. What happens then?

23 A. After -- I was the last one. They said it
24 was going to happen after dinner, which -- after the
25 showers, because we were locked down. So there was

1 two people that took a shower before me that came on
2 transport with me. Then after I took a shower, I
3 yelled out to Carlos Herrera and Alex Munoz and told
4 them I was done. So they hit the wall and I guess
5 told Timothy Martinez to tell Mario that we were
6 done with the showers.

7 Q. Then what happened?

8 A. Right after that, five minutes after that,
9 once they lifted lockdown for them, they all came
10 out and five minutes after the doors were opened,
11 that's when it happened.

12 Q. What happened?

13 A. The stabbing of Javier Molina.

14 Q. Why do you think that's when it happened?

15 A. Oh, I know it did. You could hear the
16 yelling. I could hear, "Get him, get him."

17 Q. And going back for a second, when you got
18 that second letter from Mr. Rodriguez, did Mr.
19 Herrera hand you any other paperwork at that time?

20 A. Yes, sir. He handed me back the
21 paperwork.

22 Q. What paperwork?

23 A. The paper that -- of Javier Molina.

24 Q. After you heard, "Get him, get him," what
25 happened?

1 A. After a few minutes, all the COs started
2 running into blue pod. And I lived in South 10, so
3 you could look directly outside the window and see.
4 The door was actually open. There was a lot of
5 commotion. So the first door opened was yellow pod.
6 And all the COs ran in there, and I seen when they
7 pulled him out and they were trying to revive him
8 right there in front of our doors, in front of
9 yellow pod and blue pod.

10 Q. So do I understand that the door from what
11 I'm going to call the foyer -- that door that enters
12 into yellow pod swung open?

13 A. No, not the middle door. The front door
14 that you come into the pod.

15 Q. Okay. The front door where the COs would
16 enter the pod and see all the cells?

17 A. Yes. They were yelling into yellow pod
18 for everybody to lockdown, but there was so much
19 commotion going on, everybody was listening to what
20 was going on, going back and forth. Everybody knew
21 we were going to lockdown so everybody was doing
22 their thing to hurry up. And in all of that
23 commotion, the door in the front opened and the COs
24 were yelling to go into lockdown.

25 Q. Afterwards, did Mr. Herrera come over and

1 say anything to you?

2 A. Yeah, he told me that it happened, that it
3 went down.

4 Q. What did you do with the Javier Molina
5 paperwork?

6 A. Later on that night, me and Carlos
7 Herrera -- we were talking. He lived above me. So
8 we're, like, we found out that he had died, so,
9 like, "You better get rid of that." So I got it and
10 I tore it to little pieces and flushed it.

11 Q. You flushed the Javier Molina paperwork?

12 A. Yes, sir.

13 Q. Were people moved out after the Molina
14 murder?

15 A. Yes, sir. Everybody in blue pod, the
16 whole pod was moved out. In my pod they moved
17 Mauricio Varela and Sammy Gonzalez out.

18 Q. At some point did you -- at some point
19 afterwards did you put a hit out on Mr. Daniel
20 Sanchez?

21 A. Well, it wasn't necessarily that I did.
22 Me and Mario Rodriguez, we spoke about it, and Mario
23 Rodriguez was saying that all this wouldn't have
24 happened if Dan Dan Sanchez would have did his job.
25 And his job was to cover the camera, and he didn't

1 do his job.

2 Q. So what did you and Mr. Rodriguez
3 conclude, or what resolve did you come to in that
4 conversation?

5 A. That he should get hit.

6 Q. And why? Why should he get hit?

7 A. Because that's the Number 1 rule that SNM
8 has, that you never leave a brother down, especially
9 on a mission like that. You always have to be
10 there, especially if you assign or you agree to do
11 something, then you have to carry it out, and he
12 failed to do that.

13 Q. Did anyone else agree with you and Mr.
14 Rodriguez about that?

15 A. Yes. Afterwards we spoke to Roy Martinez,
16 Robert Martinez, Daniel Archuleta, David Calbert,
17 and we all agreed that that should happen, because
18 he's supposed to be an SNM Gang leader, and he's
19 supposed to set an example. And that day he didn't
20 set an example. He let his brothers down.

21 Q. Who was the leader of blue pod for SNM on
22 March 7 of 2014?

23 A. Daniel Sanchez.

24 Q. And is Mr. Sanchez in the courtroom?

25 A. Yes, sir.

1 Q. Where is he?

2 A. Right there.

3 MR. BECK: Let the record reflect he
4 pointed to Mr. Sanchez.

5 THE COURT: The record will so reflect.
6 BY MR. BECK:

7 Q. Do you not like Mr. Sanchez?

8 A. No, I like him. I mean, he's been through
9 all this stuff. I mean, I still think he's all
10 right.

11 Q. Why did you put a hit out on him?

12 A. Because, like I said earlier, he let the
13 brothers down. That's what they preached to us
14 younger guys that the Number 1 rule -- actually,
15 when I first came into SNM, he's one of the guys
16 that I first spoke to about coming into SNM, too.
17 And he told me that's one thing that you do is, you
18 never let a brother down.

19 Q. I want to go a little bit back here to
20 Thursday when you had the problems with the
21 corrections officers.

22 A. Okay.

23 Q. What happened in the van when you passed
24 Las Cruces heading towards Otero County?

25 A. Okay. Well, I was told that between --

1 MR. LOWRY: I'm going to object, Your
2 Honor, to the relevance of this.

3 THE COURT: Well, I'll let him go back
4 into it, but do we need to get into what he was told
5 and these sort of things? Are you trying to solicit
6 these comments?

7 MR. BECK: I'm not trying to solicit those
8 comments.

9 THE COURT: Why don't you lead him through
10 this? That will give the defendants an opportunity
11 to see if they want to object to these questions.

12 MR. BECK: Sure.

13 BY MR. BECK:

14 Q. When you were heading past Las Cruces in
15 the transport van on Thursday, did you again argue
16 with the corrections officers?

17 A. Yes, I had a little meltdown.

18 Q. Hold on one second. These are just going
19 to be yes-or-no questions, Mr. Urquizo. And at that
20 point did you lose your temper?

21 A. Yes.

22 Q. Did you lose your temper because you were
23 headed towards Otero County again?

24 A. Yes.

25 Q. Did you tell the corrections officers that

1 you were going to -- something to the effect of you
2 were going to turn this case upside down and not
3 cooperate?

4 A. Yes, I did.

5 Q. Did you tell them that you were going to
6 give Dan Dan Sanchez and Pup Baca squina, or love?

7 A. Yes, I did.

8 Q. And what did you mean by that?

9 A. I meant that I was -- I said that I was
10 going to say, "Oh, well, I don't know what you're
11 talking about." If you were going to ask me, well,
12 something about Dan Dan and Pup. I was going to
13 say, "I don't know what you're talking about."

14 Q. Why would that be giving them love, or
15 squina?

16 A. Because then everything that I was being
17 truthful about, I wasn't going to, say, be truthful
18 about it. So that was going to help them out.

19 Q. Is what you told us today the truth?

20 A. Yes, sir, very true.

21 Q. Sometime after the Molina murder, were you
22 in a transport van with Mr. Perez to PNM?

23 A. Yes, sir.

24 Q. And where is Mr. Perez?

25 A. Right there in the front.

1 MR. BECK: Let the record reflect --

2 MR. VILLA: We'll stipulate, Judge.

3 THE COURT: Does that work for you, Mr.

4 Beck?

5 MR. BECK: That's fine, Your Honor.

6 BY MR. BECK:

7 Q. And did you and Mr. Perez discuss what had
8 happened during the Molina murder?

9 A. Yes, sir.

10 Q. And what did Mr. Perez tell you?

11 A. He said that --

12 MS. JACKS: Your Honor, we ask for a
13 limiting instruction.

14 THE COURT: All right. He's going to
15 testify about some statements that Mr. Perez made,
16 or at least a statement, and these can only be used
17 in your deliberations as to the charges against Mr.
18 Perez, not as to the other defendants.

19 BY MR. BECK:

20 Q. When you were in the transport van with
21 Mr. Perez after the Molina murder, what did Mr.
22 Perez tell you?

23 A. He told me that he was part of that, that
24 he's the one that gave a shank from the walker to
25 Daniel Sanchez and Mario Rodriguez for that murder.

1 Q. And what did you understand him to mean?

2 A. That he helped out, he gave them -- he was
3 bragging about it.

4 Q. How was he bragging about it?

5 A. By saying, "Oh, I know why they're taking
6 me to the North, because I was part of that murder."

7 I was like, "What?"

8 He was, "Yeah, I was part of that murder.
9 I'm the one that gave the walker so they can make
10 the shanks, so" --

11 Q. Have you ever heard of putting in work for
12 the S?

13 A. Yes.

14 Q. Did you understand Mr. Perez to mean that
15 he was putting in work for the S by giving them his
16 walker?

17 A. Yes.

18 Q. Mr. Urquizo, I'm going to take us from the
19 Molina murder to the assault of Julian Romero which
20 is Count 3 in this case. When did that happen?

21 A. That happened on July 2015.

22 Q. So this was a little more than a year
23 after the Molina murder?

24 A. Yes.

25 Q. Were you involved in the Julian Romero

1 assault?

2 A. Yes, sir.

3 Q. How were you involved?

4 A. Me and another SNM Gang member, Jonathan
5 Gomez, got the order from Anthony Baca to put -- to
6 assault Julian Romero.

7 Q. Okay. What was your position at the time?
8 Well, let me get there eventually. Where were you
9 at this time?

10 A. I was in Southern.

11 Q. Here in Las Cruces?

12 A. Yes.

13 Q. And were you housed in an SNM pod?

14 A. Yes.

15 Q. And what was your position in that SNM
16 pod?

17 A. Me and Jonathan Gomez had, I guess you'd
18 say, the key. They call it the key, llaves, like
19 you run the pod.

20 Q. Is that why -- well, and as the key-holder
21 in that pod, when you got the word from Mr. Baca
22 about the Julian Romero assault, what did you and
23 Mr. Gomez do?

24 A. We discussed it, and we would have three
25 other SNM Gang members assault Julian Romero. And

1 we had spoke to two SNM Gang members in advance, but
2 they -- they were saying, "Oh, well, we already put
3 in work," and they really didn't want to do it. So
4 we didn't want to tell the other individual, Conrad
5 Vallejos (sic), we didn't want to tell him just
6 yet, because we didn't know how he would react. So
7 we waited to the last minute, and on the day that
8 they finally opened the doors, Jonathan Gomez went
9 up to Conrad and told him it was time, that he had
10 to assault Julian Romero, which he did.

11 Q. I think you said "Vallejos." Did you mean
12 Conrad Villegas?

13 A. Villegas, yes.

14 Q. Now, after the assault of Julian Romero,
15 if Pup called the hit, why did you call Gerald
16 Archuleta?

17 A. Because I was -- from there I was taken
18 to the North. So -- and then Mr. Anthony Baca was
19 in Arizona. He was out of state. Styx was --
20 Gerald Archuleta was out in Tennessee. So I called
21 him. And the only way to get ahold of Anthony Baca
22 was through Jonathan Gomez. So he called his wife,
23 and his wife called Anthony Baca's wife, and that's
24 how he found out about the hit, that it was done.

25 Q. What did you tell Mr. Archuleta when you

1 called him about the Julian Romero hit?

2 A. I told him that it was finally done, that
3 he got what he had coming. He's, like, "What?
4 Killed him?"

5 "No, we just beat him up."

6 He's, like, "That's it?"

7 Q. And why did you just beat up Mr. Romero?

8 A. Well, he was actually supposed to -- the
9 thing was that Anthony Baca had ordered for him to
10 get killed. He was supposed to get killed. But
11 Jonathan Gomez -- he's, like, "Maybe we shouldn't do
12 that. We should just beat him up."

13 Because we had been locked down for a year
14 and a half since the murder happened with Javier
15 Molina. So we were locked down that whole time.
16 And he gets visits and all that. So he didn't
17 really want to do that. He said, "We should just
18 assault him."

19 Plus, there was only one person. The
20 other two guys didn't want to really do it. That's
21 why he was assaulted. But he was supposed to get
22 killed. That's what Anthony Baca had ordered.

23 Q. And again, Mr. Baca, to be fair, he didn't
24 tell you this personally. He told Jonathan Gomez;
25 is that right?

1 A. Yes.

2 Q. And Mr. Gomez told you?

3 A. Yes, sir.

4 MR. BECK: May I have a moment, Your
5 Honor?

6 THE COURT: You may.

7 BY MR. BECK:

8 Q. Mr. Urquizo, on the day of the Javier
9 Molina murder and the day before the Javier Molina
10 murder, what was Mr. Herrera's position in the pod?

11 A. He was the leader. He was SNM leader for
12 that pod, yellow pod.

13 MR. BECK: Pass the witness, Your Honor.

14 THE COURT: Thank you, Mr. Beck.

15 Mr. Lowry, do you wish to go first on
16 behalf of Mr. Baca?

17 MR. LOWRY: I do, Your Honor.

18 THE COURT: Mr. Lowry.

19 MR. LOWRY: Good afternoon, Your Honor.
20 May it please the Court?

21 THE COURT: Mr. Lowry.

22 CROSS-EXAMINATION

23 BY MR. LOWRY:

24 Q. Good afternoon, Mr. Urquizo.

25 A. Good afternoon.

1 Q. Mr. Urquizo, I want to start where you
2 left off talking about the Julian Romero murder.

3 A. Yes, sir.

4 Q. How many times did you debrief with the
5 United States?

6 A. Just twice. Yeah, twice.

7 Q. At least twice? Now, on each one of those
8 occasions, you informed the United States that
9 Gerald Archuleta ordered Julian Romero to be killed.

10 A. No, that was an order already for like ten
11 years, but it came from Pup, Anthony Baca.

12 Q. So Julian Romero was supposed to get
13 killed for sleeping with Gerald Archuleta's wife?

14 A. Yes, sir.

15 Q. And Gerald Archuleta wanted Julian Romero
16 killed just for that reason, didn't he?

17 A. You'd be surprised what SNM will kill for,
18 man.

19 Q. But that's why Mr. Archuleta wanted him
20 killed?

21 A. Yes, sir.

22 Q. And that's why you called Mr. Archuleta
23 after Julian Romero was attacked, so could you bask
24 in the glory of having done something for Mr.
25 Archuleta? Gerald?

1 A. Not necessarily, no.

2 Q. Not necessarily?

3 A. That was done for -- that order was done
4 for like ten years ago, but Mr. Anthony Baca is the
5 one that ordered that later on to still happen.

6 Q. But do you recall talking to the case
7 agent, Bryan Acee, and telling Bryan Acee that if
8 Mr. Baca did anything, he stopped Mr. Romero from
9 getting killed?

10 A. No.

11 Q. You don't remember that?

12 A. No.

13 MR. LOWRY: May I approach, Your Honor?

14 THE COURT: You may.

15 A. I don't remember telling him. I didn't
16 write that, so I couldn't tell you.

17 BY MR. LOWRY:

18 Q. So on March 6, 2017, you met with the
19 folks at this table; correct?

20 A. Yes, sir.

21 Q. And you met with this gentleman here at
22 the end of the table, Special Agent Bryan Acee?

23 A. Yes, I did.

24 Q. And you met with -- I believe it was the
25 whole prosecution team: Maria Armijo, Randy

1 Castellano -- I don't believe Mr. Beck was there.

2 A. I think he was for that one.

3 Q. You think he was?

4 A. I'm not too sure.

5 Q. But Nancy Stemo was there?

6 A. Yes.

7 Q. And Task Force Agent Chris Cupit; correct?

8 A. Yes.

9 Q. And Mr. Acee drafts a report of everything
10 you said at that meeting, and the report says
11 Anthony Baca sent word down that Romero should be
12 beat up, but not stabbed or killed. You don't
13 recall saying that at all?

14 A. No. I think I might have said it on
15 accident. It was supposed to be Jonathan Gomez that
16 said not to do all that.

17 Q. Okay. Now, you recall you were here to
18 testify truthfully; correct?

19 A. That's exactly what I'm doing.

20 Q. You're not just to testify to favor the
21 United States?

22 A. No, sir, I'm not.

23 Q. Okay. And so your testimony today is:
24 Mr. Acee can't write a report correctly?

25 A. No, that's not what I'm saying.

1 Q. What are you saying?

2 A. I'm saying that I might have accidentally
3 told him. There was so many things going on, but I
4 know what was said. It was Jonathan Gomez that said
5 we should just beat him up.

6 Q. Okay. So Mr. Baca didn't stop Mr. Romero
7 from getting killed?

8 A. No, it was Jonathan Gomez.

9 Q. I want to stop and -- you started your
10 testimony with a long litany of crimes you had
11 committed, and you talked about a gentleman named
12 Leroy Torrez.

13 A. Yes, sir.

14 Q. And it sounded to me like most of those
15 crimes you committed were on behalf or in
16 association with Leroy Torrez.

17 A. At the beginning of my time, he was the
18 one that was running where I was at, so yes.

19 Q. And did you run with Leroy Torrez, then?

20 A. Yes.

21 Q. So you were part of his -- what is it
22 called -- the ranfla, his car?

23 A. No, this is back in 1998. We were all
24 before -- Leroy Torrez ended up getting stabbed
25 after that happened. After he got stabbed, I no

1 longer talked to him.

2 Q. Okay. So you weren't part of the All
3 Stars that Leroy Torrez founded?

4 A. No.

5 Q. No?

6 A. There was no such thing as All Stars to
7 begin with.

8 Q. There's no such thing?

9 A. No.

10 Q. Okay. So you've never heard of the All
11 Stars?

12 A. No. He tried to start it after he got
13 stabbed. He tried to start it. It lasted like a
14 year or so and died out right away.

15 Q. So there is such a thing as All Stars?

16 A. At one time, for about a year or so.

17 Q. And Leroy Torrez started that because he
18 wanted to break away from the SNM, or start a
19 subgroup?

20 A. Well, he got stabbed by SNM, so I'm pretty
21 sure that's why.

22 Q. That's why they called them the Rejects.

23 A. I guess so. I don't know.

24 Q. There's a whole bunch of folks that were
25 part of the Rejects.

1 A. Maybe. I really don't know.

2 Q. And part of the Rejects' philosophy was
3 out with the old and in with the new; correct?

4 A. I guess. I don't really know. I didn't
5 associate with him after that.

6 Q. They wanted to kill the Old Timers; right?

7 A. Ah, I don't know about that.

8 Q. You don't know about that?

9 A. No.

10 Q. You don't remember telling Mr. Acee on
11 March 6, 2017, that that's why the young guys wanted
12 Julian Romero killed, because he was an old guy and
13 they wanted to get rid of the old guys?

14 A. But that's different than what you're
15 telling me. You were trying to go somewhere about
16 All Stars and all that. I seen the direction you
17 were trying to go, and if you're talking about that,
18 yes, eventually all those that are my age were
19 trying to move up a little bit. Yes, we were trying
20 to move up. But you were trying to take me a
21 different direction, talking about All Stars and all
22 that. So you were trying to confuse me there.

23 Q. No, I'm asking a simple question. The
24 young guys wanted to kill the old guys so they could
25 take over.

1 A. Not necessarily kill them. More or less
2 just step up, because the job they were doing was
3 not really good. They were all about drugs. They
4 were all about themselves.

5 Q. So the best way to get rid of them and
6 step up was to kill them so there would be a
7 vacancy; correct?

8 A. Not necessarily. I mean, there are other
9 ways.

10 Q. What other way?

11 A. Eventually, they would walk away, like a
12 few people have walked away. They have a program
13 where you renounce and walk away.

14 Q. Or could you kite them out to Level 6;
15 right?

16 A. Yeah, a lot of people have done that,
17 yeah.

18 Q. You can get rid of them, float a kite to
19 STIU, and have those people pulled off the pod so
20 other younger folks can take over the leadership
21 roles.

22 A. Yeah, that's another way, too, yes.

23 Q. And the reason younger folks were
24 disappointed with Mr. Baca is, he wasn't violent
25 enough?

1 A. No, it's just that he had politics that he
2 came with. It was out of state and he came with
3 some new agenda that was related to Surenos, and we
4 weren't Surenos. That's why.

5 Q. I want to step back again, and let's talk
6 about the first time the FBI came to visit you.

7 A. Yeah.

8 Q. You were in Level 5?

9 A. Right.

10 Q. Right. And I believe you testified it was
11 February 27, but they actually came to visit you on
12 February 24, didn't they?

13 A. Okay. I'm off by three days, yeah.
14 February 24.

15 Q. And when they came to visit you, you asked
16 for an attorney, didn't you?

17 A. At the beginning, yes, I did.

18 Q. But they ignored you and wanted to talk
19 anyway, didn't they?

20 A. We talked a little bit. Not nothing
21 really serious. It was just telling me, "You know
22 we could charge you." That's pretty much it. They
23 didn't really get into details about it.

24 Q. Is the death penalty serious to you?

25 A. He didn't talk about the death penalty.

1 Q. He didn't talk about the death penalty?

2 A. No. He said he could charge me for the
3 Javier Molina murder. That was okay.

4 Q. Did he talk about spending the rest of
5 your life in prison?

6 A. It was a possibility, yes.

7 Q. He did, didn't he?

8 A. I think so. I'm not too sure. I think he
9 said he could charge me with 20 years or 30 years.
10 I wasn't too sure.

11 Q. Did he talk about serving 20 years in
12 prison in addition to your State sentence?

13 A. Probably, yeah.

14 Q. And he said if you didn't think about what
15 you wanted to do, you could either consider working
16 with the United States or serving a 20-year
17 sentence, a life sentence, or even the possibility
18 of the death penalty.

19 A. He didn't get into all those details and
20 stuff, but he just asked me to think. He actually
21 asked me to think about it. He gave me time to
22 think about it.

23 Q. That was after he ignored your request for
24 an attorney.

25 A. Well, when I first walked in, he told me

1 he was an FBI agent. That's the first words that
2 came out of my mouth, I asked for a attorney. He
3 said, "Just hear me out for a few minutes."

4 That's what I did. But it wasn't an
5 aggressive approach to me, so I listened to him.

6 Q. All right. Do you recall -- okay, I would
7 think that with somebody that's been incarcerated
8 for as long as you have been, one of the most
9 important things in your life is having family
10 support you while you're incarcerated.

11 A. Right.

12 Q. And they're there for you through thick
13 and thin; right?

14 A. Yes.

15 Q. All the time?

16 A. Yes.

17 Q. They support you financially?

18 A. Yes.

19 Q. Emotionally?

20 A. Yeah.

21 Q. They keep your head together after those
22 long hours of being stuck in isolation in Level 6 by
23 yourself?

24 A. Right.

25 Q. When you're on the phone?

1 A. Yes.

2 Q. And they're there for you so you can be
3 true to them and honest with them; right?

4 A. Right.

5 Q. And that's how you are with your wife?

6 A. Right.

7 Q. You're honest with her?

8 A. Yeah, I'm honest with her about -- there
9 are certain things that I might not tell her exact
10 because I don't want to hurt her, but...

11 Q. What about your sister? You are honest
12 with her, too, aren't you?

13 A. Yeah.

14 Q. And your brother?

15 A. Right.

16 Q. Okay. Do you remember talking to your
17 sister the day after you were visited by Special
18 Agent Acee at PNM Level 5 in Santa Fe and telling
19 your sister that the FBI came to visit you and they
20 said, "You can work with us or you can face 20 years
21 in prison, you can have life in prison, or maybe
22 even get the death penalty?" Do you remember that
23 conversation?

24 A. I'm not going to lie and all that. I told
25 her, like, 20 years, 30 years. I do remember that.

1 MR. LOWRY: Your Honor, may we approach
2 real quickly?

3 THE COURT: You may.

4 (The following proceedings were held at
5 the bench.)

6 MR. LOWRY: Your Honor, I've listened to
7 some of the jail calls we've been talking about for
8 the last month, and this is to impeach Mr. Urquizo,
9 who has had conversations now, and frankly I've
10 clipped them. What we've done is started with the
11 introduction part of the jailhouse call just so the
12 jury can understand what it is, and it's clipped to
13 the relevant portion of the conversation.

14 THE COURT: Are we going to handle it
15 differently than before?

16 MR. BECK: I think there's two things.
17 First of all, I think if we're refreshing his
18 recollection, it should be done outside the presence
19 of the jury, just as when we hand someone a report
20 and they read it. The jury does not get to hear or
21 see what they're reading, because we're refreshing
22 their recollection.

23 Second of all, he hasn't testified -- he
24 hasn't testified in a way in which this would be
25 impeachment material. He asked, "If you recall."

1 He said, "I don't recall all of that."

2 So he didn't -- it's not contradicting
3 what he said. So it's improper impeachment. It
4 also uses extrinsic evidence under 608(b) if we do
5 get to impeachment.

6 THE COURT: Let's do this. Go back to the
7 podium and ask the question properly in the sense
8 that "Didn't you say."

9 MR. LOWRY: Your Honor, I would just --
10 it's more than just impeachment. This goes to show
11 his bias towards the Government. He's motivated to
12 testify on their behalf and he's motivated --

13 THE COURT: I think it's impeachment.
14 Whether it's going to his bias is something else.
15 I'll let you do what I let Mr. Villa do with Mr.
16 Calbert. So I'll let you do it that way. Ask the
17 question. Because if it is just refreshment, then I
18 probably do let you play it out. And if it's going
19 to be he's not going to admit to saying these
20 things, then I'll let you play it as impeachment.

21 MR. LOWRY: All right.

22 (The following proceedings were held in
23 open court.)

24 BY MR. LOWRY:

25 Q. Mr. Urquizo, are you denying that you

1 talked to your sister about the FBI saying they
2 would impose the death penalty?

3 A. I don't know if I did or didn't. I mean,
4 I made so many phone calls since then. But I mean,
5 even if I did -- I mean, I'm not too sure if I did.

6 Q. Okay.

7 A. I can't say 100 percent if I did or I
8 didn't.

9 MR. LOWRY: Your Honor, can we move --

10 THE COURT: Well, let me talk to counsel.
11 So we'll take a short break here. All rise.

12 (The jury left the courtroom.)

13 MR. LOWRY: Your Honor, can we ask to have
14 the witness removed for this conversation?

15 THE COURT: Aren't you going to refresh --

16 MR. LOWRY: Sure. We can do that.

17 THE COURT: Everybody be seated. Tell him
18 what you're going to do.

19 BY MR. LOWRY:

20 Q. Okay, Mr. Urquizo. I'm going to play you
21 an audio clip, and it's just a portion of the
22 telephone call that you had with your sister. I
23 think it started off with a woman named Maria, but
24 it was a three-way call, and you talked to both of
25 them about your conversation with the FBI the day

1 before, on February 24, 2017.

2 This is an audio clip from the discovery,
3 and we can give you -- it's Exhibit Z-2 for
4 identification purposes, and it is a clip that was
5 referred to in discovery by this huge alphanumeric
6 pattern. It was
7 10.98.0.21-7636A744A62001512BD527695F2855D.

8 (Phone call played.)

9 MR. BECK: Judge, Your Honor.

10 THE COURT: Yes.

11 MR. BECK: Hearing that -- I guess I
12 wasn't sure if it was a call that -- Mr. Urquizo's
13 pin number had been stolen in some portions of time.
14 The United States doesn't oppose that as an exhibit,
15 entering it into evidence, and playing it in front
16 of the jury. That's fine.

17 THE COURT: All right. Let's bring the
18 jury back in, then.

19 MR. BECK: Sorry. Not entering it into
20 evidence; just for impeachment purposes. But the
21 United States does not oppose playing it in front of
22 the jury with a limiting instruction, with the
23 limiting.

24 THE COURT: The limiting instruction being
25 it's just used for impeachment?

1 MR. BECK: That's right, Your Honor.

2 THE COURT: Well, you'll have to set up
3 either the impeachment or that his memory has been
4 refreshed, one or the other.

5 MS. JACKS: Excuse me. That seemed to be
6 relevant on the issue of nonhearsay purposes, state
7 of mind.

8 MR. LOWRY: And Your Honor, I think it
9 really does go to his bias to testify favorably for
10 the Government and the pressure that was put on him.

11 THE COURT: Well, get him either to admit
12 it, or impeach him with it. If it comes in for -- I
13 guess I don't understand how his state of mind is
14 important at the time.

15 MR. VILLA: Motive.

16 MS. JACKS: Somebody that thinks they'd be
17 facing those types of punishments could have certain
18 motives to say certain things.

19 MR. LOWRY: Your Honor, he's just saying
20 on the phone he's just getting ready to get released
21 from prison and now they're coming at him with the
22 death penalty, life in prison, or 20 years, or
23 cooperating. It goes directly to his bias to please
24 the United States with favorable testimony.

25 THE COURT: Let's see what you do with it.

1 All rise.

2 (The jury entered the courtroom.)

3 THE COURT: All right. Everyone be
4 seated.

5 All right, Mr. Urquizo. I'll remind you
6 you're still under oath.

7 Mr. Lowry.

8 A. All right.

9 BY MR. LOWRY:

10 Q. Mr. Urquizo, if we listened to the
11 recording, would it help refresh your recollection
12 as to what you talked to your family about?

13 A. Yes.

14 MR. LOWRY: Can we play Z2?

15 (Tape played).

16 Q. So the FBI came and talked to you about
17 the death penalty, and that completely changed your
18 life.

19 A. No, actually, I'm still -- I'm sticking to
20 the truth, and the truth is: He never told me
21 nothing about the death penalty. I made that
22 assumption once I knew what was going on. I seen
23 the news and all that. Everybody else getting
24 charged for the murder was getting the death
25 penalty. At that time they still had the death

1 penalty. They ended up taking it off.

2 But he didn't tell me that I was facing
3 the death penalty. I know he's told me 20 years.
4 I'm almost positive he told me, "You can get 20
5 years, or even up to life for the murder of Javier
6 Molina."

7 The death penalty wasn't -- he never told
8 that to me, so I'm not going to sit here and tell
9 you that he told me that, because he didn't tell me
10 that.

11 Q. So you lied to your sister and you lied to
12 Maria about --

13 A. No, I didn't lie to them. I just told you
14 I made an assumption that I was thinking that right
15 away, because I seen that on the news. I seen that
16 with everybody else. That's why.

17 Q. You followed this case on the news? Did
18 you realize that the death penalty was taken off --

19 A. Actually, it wasn't taken off at that
20 time.

21 Q. That was February --

22 A. A little after that it was taken off. In
23 February it was still on.

24 Q. It was taken off on June 9, 2016.

25 A. Okay. When did this happen?

1 Q. February 25.

2 MR. BECK: Objection, Your Honor. Counsel
3 is misstating the evidence.

4 THE COURT: Well, I'll let you clean it up
5 on redirect. Overruled.

6 A. As far as I was concerned, the death
7 penalty was still there. So that's why I said it,
8 but they never told me that. So I'm not going to
9 sit here and tell you that he did tell me that,
10 because he didn't tell me that.

11 BY MR. LOWRY:

12 Q. But they left you with the serious
13 impression that you were in deep trouble.

14 A. Yes, but I knew that. I actually knew I
15 was in deep trouble. Just a matter of time when
16 they were going to come talk to me. I already knew
17 that.

18 Q. That's because you were a shot-caller?

19 A. Not necessarily. Because I know what I
20 did.

21 Q. They didn't call you a shot-caller at that
22 meeting?

23 A. Well, at that time, afterwards, after
24 everything happened. But I mean, I knew what I did
25 when I went to Cruces. I knew what message I took

1 down there. I knew everything. I knew I was part
2 of the whole Javier Molina case. It's just that
3 they hadn't come and talked to me yet.

4 Q. You knew you were involved in a lot of
5 other homicides.

6 A. If we're talking about Javier Molina, I
7 knew about that.

8 Q. Did they talk to you about the recordings
9 they had made of you with Styx?

10 A. No. I don't remember.

11 Q. Did they play recordings for you at that
12 first meeting?

13 A. No.

14 Q. They just said, "You're in deep trouble.
15 You play with us or you're going to get a RICO
16 charge"?

17 A. No, they just told me to think about it,
18 because they could charge me. And he was going to
19 give me some time to think about it, and I told him,
20 "Let me think about it."

21 And I actually called my wife and I told
22 her, and she's, like, "You've been thinking about
23 doing this already for a while, so you might as well
24 do it now that you have a chance."

25 A few months prior to all this, I was

1 thinking about getting out. I just didn't know how
2 to do it because I didn't want to go to the rec
3 program that they have. So whenever they came and
4 talked to me, it was actually a good opportunity for
5 me to get out.

6 Q. Why didn't you just go talk to them? What
7 were you waiting for?

8 A. Because I just -- at that time, I was kind
9 of, like, I guess, the key guy there in that pod so
10 I didn't want to make it look bad. I just didn't
11 know how to go about it. So when they came to me,
12 it was a lot easier than me going to them.

13 Q. Because you were the shot-caller for that
14 pod?

15 A. At that time, yes.

16 Q. So they gave you a couple of weeks to
17 think about it?

18 A. No, I thought about it right away. I
19 thought about it within an hour of talking to them.
20 I told them, "Give me a chance to call my wife real
21 quick," and I talked to my wife, and she told me,
22 "You know you've been wanting to do this already for
23 a while. So why don't you just do it?"

24 Q. Then why were you so reluctant talking to
25 her about, "Ah, I don't know"?

1 A. Because I still knew that the possibility
2 of me being, like, 20 years is still there. So I
3 was telling her, "Ah, well, I'm not too sure."

4 Q. You didn't want to get 20 years, did you?

5 A. I don't think nobody wants to get 20
6 years.

7 Q. That's because prison is hell, isn't it?

8 A. Right.

9 Q. It's not where you want to be?

10 A. No.

11 Q. And you wanted to get out?

12 A. Who doesn't? Anybody that's in prison
13 wants to get out.

14 THE COURT: Mr. Lowry, would this be a
15 good time for us to take our break for the evening?

16 MR. LOWRY: Sure, Your Honor.

17 THE COURT: Ladies and gentlemen, you've
18 just heard the testimony of Mr. Urquizo, and you've
19 also heard that before this trial he made a
20 statement that may be different from his testimony
21 here in court. This earlier statement was brought
22 to your attention only to help you decide how
23 believable his testimony in this trial is. You
24 cannot use it as proof of anything else. You can
25 only use it as one way of evaluating Mr. Urquizo's

1 testimony here in court.

2 All right. I appreciate your hard work
3 today. Y'all have a good evening. We'll see you at
4 8:30 in the morning.

5 All rise.

6 (The jury left the courtroom.)

7 THE COURT: I'll try to have you another
8 set of jury instructions in the morning. But I
9 think both sides need to start doing this right now.
10 You need to start running some yellow tabs or some
11 sort of list. You're going to need to tell me who
12 we're going to put in the drug -- and I don't want
13 to wait until the last minute to do this. So I'd
14 like to -- if we're going to include these
15 instructions, then we need to start doing it now.

16 And so at the end of each day, I'd like
17 y'all to shoot me an email or a letter or something.
18 Tell me whether we picked up anybody additional.

19 The drug abuser -- if we're going to use
20 that, we need to put names in there. Prior
21 inconsistent statements. Who the experts are.
22 Deliberate -- the willful blindness instruction. I
23 need to figure out what the Government's contention
24 is that there has been some deliberate ignorance.

25 Plea agreements. I need to list out all

1 the names in the plea agreements, and then all the
2 names of who we're going to put in the accomplice
3 instruction.

4 So that's my list of six right at the
5 moment. We're going to have to tailor those and put
6 individual names in. So start running a list, and
7 at the end of the day shooting Ms. Standridge or
8 Ms. Wild or somebody -- however we're doing that --
9 saying, "This needs to go in there," because I'll
10 start adding them to them. But if we wait eight
11 weeks and then start reconstructing this trial,
12 we're not going to do a good job, and it's just
13 going to delay everything.

14 So start feeding me those names on those
15 six categories.

16 MR. BECK: Your Honor, I don't believe
17 that Mr. Urquizo was impeached, and I understand
18 that you gave an instruction at the end of that that
19 something was to be used for impeachment.

20 THE COURT: Yeah, I did, because I think
21 he was impeached. He said one thing there, and then
22 he said that wasn't right; he got it from some other
23 source. So the instruction will stand.

24 All right. Y'all have a good evening.

25 (The Court stood in recess.)

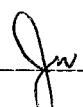
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 3rd day of February, 2019.

13
14 
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